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PROBLEMS

OF THE

GERMAN-AMERICAN CLAIMS
COMMISSION

BY

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Reference

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PREFATORY NOTE

The present volume is a translation of the first part of "Probleme und Entscheidungen der Deutsch-Amerikanischen Schadens-Commission" (Problems and Decisions of the German-American Mixed Claims Commission), which was published in 1927 in Mannheim, Germany, from the pen of Dr. Wilhelm Kiesselbach, the German member of the Commission. The decisions of the Commission which constitute the second part of the German volume are accessible in their original language to American and English readers in *Mixed Claims Commission (United States and Germany), Administrative Decisions and Opinions of a General Nature and Opinions in Individual Lusitania Claims and other Cases* (Washington, Government Printing Office), and the citations in this volume are to that text.

Judge Kiesselbach's discussion of the problems of the Commission is very valuable not only for the German readers for whom it was written, but also for American readers by reason of its presentation of a carefully reasoned German estimate of the Commission's labors and of the American point of view. His faith in the upright spirit of the eminent umpire, the late Judge Edwin B. Parker, a Trustee of the Carnegie Endowment for International Peace, "who was constantly animated by a meticulous striving for impartiality," was never shaken by the disappointments which "awaited the Germans, whose representatives were called upon to defend the rights of a vanquished people in a foreign atmosphere and against foreign conceptions of law."

The Carnegie Endowment for International Peace regards it as a privilege to lay before the reading public of the United States an example of the way in which arbitration in time of peace, through arbiters pervaded with the spirit of fairness, very satisfactorily adjusts the damages of war in accordance with the principles of justice.

JAMES BROWN SCOTT,

Director of the Division of International Law.

WASHINGTON, D. C.,
January 20, 1930.

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INTRODUCTION

The following pages are intended to offer a brief survey, from the German point of view, of the problems which had to be solved by the Mixed Claims Commission at Washington in connection with the establishment of the American claims arising from the World War. Moreover, they deal with questions whose treatment by the Commission may arouse a more general interest.

The book contains brief sketches, the first drafts of which were usually written under the direct impression of the discussions in the Commission itself. These sketches are designed to serve primarily as an introduction to the decisions themselves. They do not purport to be exhaustive attempts at a learned solution, nor do they try to give a systematic construction of the legal principles touched upon in the proceedings of the Commission. Each chapter is to be considered as presenting, quite apart from the other chapters, an independent viewpoint with regard to the problems treated therein. It is perhaps an inevitable consequence of such a method that points of view and modes of reasoning will recur now and then in the individual chapters.

It must be stated clearly at the outset that the "legal" foundations of the Treaty of Versailles as such are not worthy of any comment.¹

The endeavor of the United States to clothe the "application" of the provisions of the Treaty of Versailles with the guaranties of law has alone given those principles a significance transcending their ephemeral right to exist. For the necessary consequence of this endeavor was that view-points and principles of international law had to be used as supporting and guiding factors in the maze of contractual provisions which are often heaped upon each other in a contradictory and illogical manner.

¹ Nevertheless, many principles based solely on the special provisions of the Treaty of Versailles and laid down by the Commission, as well as some decisions rendered by it, may retain a significance over and above their momentary value. It is already becoming apparent that in dealing with the Commission's decisions American writers show a certain tendency to ascribe a more general applicability to these decisions, quite apart from their specific dependence upon the Treaty of Versailles.

This confirms the experience of the Commission, which in the utilization of earlier international decisions frequently witnessed a strong tendency toward excessive generalization of decisions rendered on the basis of special circumstances of law or of fact.

It is to the everlasting credit of the United States that even after the successes and impressions of the last war it has remained true to its principle of settlement by arbitration. And even if Germany may honestly believe that in many important points the results achieved in Washington impose unjust burdens upon her, yet it should not be forgotten that the United States is the only nation which as a matter of principle has accorded the German people not only the right to be fully heard in all questions pertaining to the claims for indemnity, but also the privilege of cooperating fully, and that the Americans have approached the important differences which of course existed, in a spirit of honest cooperation and fair treatment.

Serious disappointments awaited the Germans, whose representatives were called upon to defend the rights of a vanquished people in a foreign atmosphere and against foreign conceptions of law. But all these disappointments could never shake their faith in the upright spirit of the Umpire, Judge Edwin B. Parker, who was ever animated by a meticulous striving for impartiality.

An important consequence of the decision of the United States to deal with the claims on the basis of arbitration was that those claims which according to the Treaty of Versailles—Article 233 and Annex 1 *sub* Article 244—had been established onesidedly and more or less uncontrollably by the Reparations Commission and which represent the reparation claims proper, also came up for contradictory discussion and decision on their merits.

The settlement of this portion of the American claims, as well as of the so-called neutrality claims, i.e., those which dated from the period of American neutrality, formed the most important part of the labors of the Commission. In dealing with them, questions of a more general importance, which will be considered in the following chapters, arose and were discussed. On the other hand, claims arising from the liability of Germany for the employment of extraordinary measures of war, and the so-called private debts, i.e., claims arising from matters involving private law alone, for which classes of claims the awards of the British court of arbitration were decisive in many points, assumed a legally much less important place in the decisions of the Commission.

The reason therefor lies in the differences of subject matter. The manner in which the Treaty of Versailles makes Germany accountable for the employment of extraordinary measures of war, can give rise only to questions of interpretation of the text of the provisions in question. And similarly the manner in which the treatment of private

legal relations is dealt with in the treaty may perhaps lead to interesting questions of private law, but it can hardly serve to open problems of international law.

On the other hand, the reparation claims proper and the neutrality claims, as arbitrarily and dictatorially as they have been imposed upon Germany, always retain the basis of general international relations of the nations with respect to each other, as they are laid down in international law, so that despite the fetters imposed upon this body of law by the treaty, continual recourse was necessarily had to general law for the purpose of dispelling doubt and filling in gaps.

This recourse was all the more frequently necessary since—at least in regard to the reparation claims proper—the method of liquidation chosen by the United States could not always be adapted readily to the reparation system of the Treaty of Versailles.

To judge by the contents and method of this treaty, with its reparation provisions as outlined in Part VIII, it did not aim at the support of the “injured” economic interests of separate individuals, but rather at the indemnification of the allied nations as a whole.

An adaptation of these principles to the indemnification of individuals was accordingly bound to meet with obstacles.

But precisely these difficulties often led to the better and clearer elaboration of the underlying problems.

These problems themselves, however—and that is the writer’s fundamental justification in preparing the present work—have touched upon questions which, so far as we could determine, have never been treated systematically in Germany, though they have been discussed in other connections. It is clear that they deserve most serious consideration, especially with regard to the future.

Private International Law—not to be confused with international private law, which is a part of private law—is the designation which I should like to apply to that section of public international law which deals with the conditions in public law and the general material prerequisites whereby the claim of a separate individual who has been injured in his person or in his property may be pressed as such by the nation to which he belongs against another nation. This is a field which in future will doubtless claim increasing attention.

It is certain that the idea of arbitral settlement, especially with respect to disputed claims of individuals (including corporations) based upon international measures, will continually gain in importance.

But precisely the development and treatment of the general questions which arose in this connection before the Commission in Washington show how much still remains to be done in this field.

For the promotion of sound international relations, the method of settling these questions is much less important than the urgent need of some settlement, whatever it may be.

The principle of settling international disputes by courts of arbitration, a principle which is of inestimable value for promoting better understanding among the nations, early laid the foundation, in the international treatment of the claims of individuals based upon international law, for the establishment of certain general norms which formally and materially regulate such claims.

The two extremely valuable collections of the American scholar, John Bassett Moore, *A Digest of International Law*, eight volumes, and *History and Digest of the International Arbitrations to which the United States has been a Party*, six volumes, and the well-known work of his pupil, Professor Edwin Borchard, *Diplomatic Protection of Citizens Abroad*, as well as the compilation of Ralston, *International Arbitral Law*, and the recently enlarged edition *The Law and Procedure of International Tribunals*, offer manifold and interesting material in this connection.

But this material shows at the same time how doubtful all questions still are, how changing and contradictory is the attitude of the governments and also of the arbitral courts with respect to these questions, depending upon whether they take the part of the plaintiff or of the defendant, and to what extent the political factor of power occasionally asserts itself in them, to the detriment of impartial law.¹

The establishment of order and rules in this respect will be a task of international conciliation, and will perhaps devolve primarily upon the leading forces which are active at The Hague for the development of international law.

Theoretically, however, it will be the duty of German legal scholars, with their methods of deduction and systematization which are foreign to the spirit of Anglo-American law, to take a part in this labor.

And in practice it will be the duty of our German diplomacy to pursue the development of these problems in order to be prepared when it becomes necessary to protect the German interests in the development of Germany's relations to foreign countries.

¹ In a somewhat different connection the presiding judge of the Reichsgericht, Herr Dr. Simons, in a thoughtful lecture delivered before the German Society for International Law on June 4, 1925, also called attention (p. 22) to this unfortunate fact.

If in the future revision of the legal relations of the nations to each other, the extent of legal protection claimed by the Germans is not to be considerably less than that which according to Anglo-American conceptions is the rightful prerogative of the Anglo-American world, there is only one alternative; to wit, that either the theories controlling private international law and their application shall be more closely assimilated to the German concept of law, thus restricting the extent of protection accorded at least by the United States to its citizens, or that the German conception shall emerge from its position of isolation and shall approach the more pretentious and far-reaching American theory.¹

The interpretation of the treaties of Versailles and Berlin gave rise to most serious differences of opinion between the two nations in many fundamental questions. These were the result of a radically divergent attitude toward the problems and conceptions underlying the questions. Such differences could have been avoided in part if the general principles of law had been developed more uniformly.

The development of the American principles of protection accorded to American citizens, as it has manifested itself in recent treaties with numerous South-American states and in the still more recent treaty with Mexico, is so far-reaching and so in harmony with the conscious power of this mighty state that it will inevitably influence the gradual evolution of inchoate "private international law." And it is quite necessary to direct our attention seriously to these questions.

We repeat that the following pages touch only the most important questions which came before the Commission. That they do so from the point of view of the German Commissioner goes without saying. For a more thorough study, the reader is referred to the exhaustive and profound memoranda in which the representatives of the two states untiringly compiled and utilized materials and points of view.

¹ Attention is called to the interesting remarks of Dr. Hermann Isay in his lecture "The Isolation of German Legal Thought." [*Die Isolierung des deutschen Rechtsdenkens*, Berlin, 1924] especially on p. 20.

As a characteristic example of the differences prevailing between the German and the American attitude, the following incident is cited:

An American creditor had informed his German debtor by letter that he would withdraw the petition which he had submitted to the American agent. Nevertheless the claim was presented to the Commission a few months later by the American agent. When the German agent reproachfully alluded to the letter wherein the withdrawal was announced, the American agent replied in astonishment that such a promise was not binding because the necessary "consideration" had not been given.

But of course the decisions of the Commission itself, in so far as they deal with the fundamental questions, will be of primary importance for the further study of the problems. We assume that a complete collection will be published in America after the labors of the Commission have been concluded.

CHAPTER I

HISTORY AND DUTIES OF THE COMMISSION

After the Senate of the United States had refused to ratify the Treaty of Versailles which had been signed by President Wilson, and after an attempt on the part of Congress to terminate the state of war with Germany had in turn been vetoed by Wilson, the so-called Knox-Porter Resolution, adopted by both houses of Congress soon after the inauguration of President Harding on March 4, 1921, and approved by him on July 2, 1921, declared the state of war to be "at an end."

In the resolution it was stated that "in making this declaration, and as a part of it, there are expressly reserved to the United States of America and its nationals any and all rights, privileges, indemnities, reparations, or advantages" (Sec. 2 of the resolution). As specific sources for such "rights," "privileges," etc., were mentioned the terms of the armistice, the participation of the United States in the war, the Treaty of Versailles and those rights "to which it [the United States] is entitled as one of the principal allied and associated powers; or to which it is entitled by virtue of any Act or Acts of Congress; or otherwise."^{1 2}

The pertinent sections of this resolution were incorporated in the formal treaty of peace with Germany, the so-called Treaty of Berlin of August 25, 1921.

¹ The exact text of Sec. 2 is as follows:

Sec. 2. "That in making this declaration, and as a part of it, there are expressly reserved to the United States of America and its nationals any and all rights, privileges, indemnities, reparations, or advantages, together with the right to enforce the same, to which it or they have become entitled under the terms of the armistice signed November 11, 1918, or any extensions or modifications thereof; or which were acquired by or are in the possession of the United States of America by reason of its participation in the war or to which its nationals have thereby become rightfully entitled; or which, under the Treaty of Versailles, have been stipulated for its or their benefit; or to which it is entitled as one of the principal allied and associated powers; or to which it is entitled by virtue of any Act or Acts of Congress; or otherwise."

² It is worth noting that, as the Umpire says in Decision VII, the reservations of Sec. 2 are in part directed not against Germany but against the "associated" powers, with respect to which the United States wished also to safeguard all its rights acquired by virtue of its participation in the war, etc.

Moreover, Article I of this treaty expressly provided that Germany undertakes

to accord to the United States, and the United States shall have and enjoy, all the rights, privileges, indemnities, reparations or advantages specified in the aforesaid Joint Resolution of the Congress of the United States of July 2, 1921, including all the rights and advantages stipulated for the benefit of the United States in the Treaty of Versailles which the United States shall fully enjoy notwithstanding the fact that such Treaty has not been ratified by the United States.

In order to establish the financial obligations devolving upon Germany as a result of these provisions, an agreement was made between the two governments on August 10, 1922, whereby a Mixed Commission was appointed. It was to consist of one commissioner for each state and of an umpire to be appointed by the two governments. The latter was to decide "upon any cases concerning which the commissioners may disagree, or upon any points of difference that may arise in the course of their proceedings."

The selection of the umpire was left by the German Government to the President of the United States, and thus another important step was taken toward the reestablishment of the relations of mutual confidence which had formerly existed between the two nations.

The President appointed the highly respected member of the highest American court, Justice William R. Day of the United States Supreme Court, while Judge Edwin B. Parker was chosen American Commissioner and the present writer, German Commissioner.

In the spring of 1923, Judge Edwin B. Parker, with the consent of the German Government, took the place of Justice Day, who retired for reasons of health,³ while Mr. Chandler P. Anderson, Counselor for the Department of State under President Taft, who had already represented the United States in several arbitration commissions, became American Commissioner.

The decisions of the two Commissioners, and those of the Umpire, respectively, were to be "accepted as final and binding upon the two Governments" (Art. VI, paragraph 3, of the Agreement).

The Commission was to decide upon those claims "which are more particularly defined in the treaty of August 25, 1921, and in the Treaty of Versailles," and which are then specified in Article I of the Agreement in the following three categories:

³ Justice Day died a few weeks later.

1. Claims of American citizens, arising since July 31, 1914, in respect of damage to, or seizure of, their property, rights and interests, including any company or association in which they are interested, within German territory as it existed on August 1, 1914;

2. Other claims for loss or damage to which the United States or its nationals have been subjected with respect to injuries to persons, or to property, rights and interests, including any company or association in which American nationals are interested, since July 31, 1914, as a consequence of the war;

3. Debts owing to American citizens by the German Government or by German nationals.

The Commission agreed that this formulation did not serve to establish any new legal basis for the American claims and that it had merely a declaratory (or descriptive), not a constitutive significance.

In Germany the Agreement was approved by the legislative bodies by laws of January 31, 1923 (*Reichsgesetzblatt* II, p. 113),⁴ while in the United States it was merely authorized by the President. Accordingly, so far as the United States is concerned, the Agreement does not possess the significance of a treaty, which would have required the advice and consent of the Senate (with a majority of two-thirds), according to Article II of the Constitution of the United States.

It is not likely that difficulties will arise as a result of this circumstance, though it should not be overlooked that the legal force of the Agreement is thereby weakened considerably. Thus it is doubtful, for instance, to what extent the rejection on the part of the Commission of a private claim made against a German debtor is formally binding as between creditor and debtor.

The formal preparations for treating the vast material, which in the form of some 13,500 claims involving about one and one half billions of dollars⁵ without interest were to be handled and decided upon by the

⁴ Cf. also the German decree of June 28, 1923 "for the execution of the German-American Agreement of August 10, 1922."

⁵ About 11% of the total sum represented by the claims was actually awarded.

In reply to the assertion made again and again in America, even by responsible persons, that the total of the indemnity sum gives an idea of the extent of the misdeeds committed by Germany against Americans and American property, and of the "wrongs" and "outrages" of Germany, the "arch malefactor," it must be emphasized that according to the provisions of the treaties of Versailles and Berlin and the interpretation given them by the Umpire, Germany was accountable, not only for the period after America's entrance into the war but also for the entire duration of American neutrality, both for all illegal measures—i.e., those contrary to international law—and even for all legal measures—i.e., those in harmony with international law—in so far as they were prejudicial to an American. Germany was

Commission, lay in the hands of the two agents, to whom a number of legal assistants were attached. Naturally there were considerably fewer Germans than Americans.

On the German side the government was represented by the Privy Councilor of Justice and Legation Karl von Lewinski, while on the American side Robert R. Morris and, after his early retirement, Robert W. Bonyng, both attorneys at law in New York, represented the government.

The German representative was assisted for a long time by the former Councilor of Legation Dr. O. C. Kiep, and then after Dr. Kiep had received a call to the Chancellery of the Reich, by Judge M. von der Decken, and until October 1925, by Dr. Paul Leverkühn, while from the spring of 1925 on, Dr. Hermann Janssen and from October 1925, on, Dr. W. Tannenberg acted as assistants. The German side

accountable also, for the period of America's participation in the war, for the acts of her own allies and even for war damages, in the narrower sense of the term, committed by her enemies. Thus the damages of an American whose property on the Rhine was destroyed by British fliers, were charged against Germany. And this would have been the case even if that property had been destroyed by American fliers. The reparations for the death and injuries of American nationals do not exceed a total sum of 4 millions of dollars, which includes the personal damages arising from the sinking of the *Lusitania* for which the claims amounted to 50 millions, reduced by the decisions of the Commission to about 2½ millions.

Germany was also held largely accountable for the damage arising from the destruction of non-American, e.g., British or neutral vessels and goods, in so far as American insurers and re-insurers were involved in the loss, even if the destruction took place in a completely unobjectionable manner and in accordance with the principles of international law, so that the neutral owner himself, for instance, had no right to make a claim.

A further very important part of the indemnity has its origin in the obligation of the German Government to restore the original value of depreciated sums owed by German debtors to American creditors. The oft repeated assertion that Germany must also pay indemnity for losses arising from the sale and disposal below value of American property confiscated in Germany is easily refuted by the fact that in Germany—quite in contrast to the drastic measures taken in America—no forced liquidation whatsoever took place. No American enterprise and no American share in any non-American enterprise was liquidated and sold. The German Government restricted itself to registration of American property and administration thereof by individually commissioned persons, or, as the report of the American Chamber of Commerce in Berlin puts it: "Germany merely regulated and administered American property." So far as the administration of American property in Germany is concerned, only two cases were presented to the Commission wherein as much as a suspicion of careless or objectionable administration is raised. The claims made in this connection do not exceed the sum of \$150,000.

was also assisted by a young American attorney, Thomas J. Healy. The labor which these gentlemen had to perform was tremendous both in amount and intensity, and its splendid and successful accomplishment under the leadership of the German representative can hardly be overestimated. It was possible to achieve this only by virtue of the painstaking and excellent work by which the American section of the German Foreign Office under the legal guidance of the Councilor of the Hanseatic Supreme Court, Herr Dr. Hofmann, supported and furthered the German interests.

It soon became apparent that the vast material, which in amount exceeded everything which ever confronted any previous international commission, could not be handled in the usual manner, especially if the Commission, in accordance with its intention, was to perform its labors in the shortest possible time. The attempt of the first American agent—probably suggested by his experience as a member of the American-Venezuelan Commission—to have the Commission decide the claims in numerous individual cases with extensive and detailed preparation, using the most typical cases as a foundation, soon proved unfeasible.⁶

Hence new methods had to be found. Under the leadership of the Umpire, an entirely novel and independent mode of approach was devised. The basic idea was to supplant the individual decision by general principles calculated to determine ways and means whereby the two sides might dispose of all superfluities.

In so far as the questions to be decided were brought before the Commission in a general form, these principles were established in so-called administrative decisions; in so far as they were set up by means of individual cases, they were established by generalized opinions based on the cases.

In case the two Commissioners had motivated their dissenting view in writing, the votes of the Commissioners together with the decision of the Umpire, which in part can be understood only in the light of its attitude toward these votes, were published.

In preparation for these decisions, the two agents exchanged written memoranda wherein they collected and motivated their points of view with care and in a manner which is often of scientific value, applying material which is important also from the point of view of international law. For a future student of the work of the Commission, these memoranda will furnish invaluable material.

In important questions the written memorandum was supplemented

⁶ The American-Venezuelan Commission had decided 53 cases in five years.

by a verbal plea, but in accordance with the provisions of the Agreement of August 10, 1922, only the agents and the members of the two staffs, not the attorneys of the interested parties, were admitted.

With the help of the general guiding principles, the two agents could in most cases (except when complicated disputes in private law were involved) formulate the facts essential for the decision of the individual case in a so-called agreed statement drawn up jointly by the two agents, and on the basis of this the Commission could render its decision either by award or dismissal.

In the case of uncertainties or gaps, the agents could supplement the agreed statement by "interrogatories," i.e., by specific written questions to be presented to the parties or witnesses. This is a method which the Commission itself also used in individual cases.

Moreover, in cases which required special investigation in Germany, the summers were sometimes used for preparations and sometimes for settlement by compromise, the two agents and the reporters cooperating.

Except in special cases before the Umpire, the parties or witnesses were not examined before the Commission.

Questions of the burden of evidence were discussed but never made the basis of a formal decision.

The Commission did not overlook the disadvantages which in this respect often resulted for Germany from the fact that the claims were based solely on the one-sided material of the interested plaintiff parties. Sometimes this fact was taken account of in the decisions. Numerous claims were dismissed because of insufficient verification in fact.

In establishing and utilizing the actual material, the spirit of co-operation prevailing among the representatives of both sides was a great help in simplifying and hastening the work.

It proved especially difficult to determine those questions the decision of which was necessary and expedient for the work of the Commission.

The task was considerably complicated by the fact that this was absolutely virgin soil upon which the material to be deduced from the Treaty of Berlin and especially from the Treaty of Versailles had to be formed and shaped in conjunction with the principles of international and civil law.

Simple classification of the claims, though of course necessary and helpful, was not sufficient for handling them.

The "categorization" of the claims mentioned in the Agreement of August 10, 1922, and described above, proved to be of no practical usefulness.

Accordingly the Commission used a general classification which took the material foundation more into account, and in accordance therewith the claims were divided as follows:

1. The claims belonging to the period of the war and specified in the main in Annex 1 *sub* Article 244 of the Treaty of Versailles, i.e., the reparations claims proper. As stated in the introduction, claims derived from these provisions were submitted for the first and only time to arbitration on the part of a mixed commission.

2. The claims dating from the time of the neutrality of the United States, i.e., the so-called neutrality claims.

Especially in cases in which the German point of view was successful, the treatment of such claims was bound to go deeply into the norms of general international law. The chapter on neutrality claims is devoted to these cases.

3. The claims for indemnity resulting from extraordinary measures of war in accordance with Article 297 and Annex 1 *sub* Article 298 of the Treaty of Versailles, and finally

4. The claims of private American creditors against private German debtors, the so-called private debts.

The German Government expressed scruples against including this class of claims, but the American Government attached importance to their settlement together with the others by the Commission. As the labors of the Commission later showed, the American Government had in mind the settlement of these claims only in so far as they were applicable to the liability of the German Reich which the American Government emphasized, that is in so far as they had a foundation in public law. But since this liability could not be determined without reference to the private law aspect of the claim, this part of the work of the Commission caused considerable difficulties which can not be discussed in detail here.⁷

The claims coming under 3 and 4 were not nearly as important to the Commission as those under 1 and 2.

From the attempt to achieve a plan and a settlement for this overwhelming material, there followed, more from force of circumstances than from theoretical operations of thought, the system according to which the Commission took up the individual questions.

⁷ Cf. the remarks made in Chapter II.

First of all, the task was externally delimited to a certain extent by determining the norms for regulating the competency to bring suit and the question of liability, including the politically important question of the "personal" and "real" liability of the German Reich.

Within the limits thus laid down, the groundwork had to be determined. The extent of Germany's liability was fixed, and the general principles were clearly defined.

The strongly contested Decision I established the material extent of German liability (pp. 1 *et seq.*)⁸ for the neutrality claims and the reparation claims proper. Decision II (pp. 5 *et seq.*) followed with general norms on the laws regulating the material and formal prerequisites of the right to present a claim, with the influence of nationality, delimitation of the jurisdiction of the Commission in apportioning damages among the "rightful claimants," to which, overlapping the material legal norms, there was joined in Part 2 of Decision II the question, left disputed by the text of the pertinent provisions of the treaties of Berlin and Versailles, of the connection between cause of the damage and effect, i.e., the liability for direct, indirect and remote damage.

This second part of Decision II was prompted by the question, submitted at the same time to the Commission, of the liability of Germany for war-risk insurance premiums which was decided in the opinion on war-risk insurance premiums (pp. 71 *et seq.*), but from which the more general motivation was incorporated in Decision II in consideration of its importance as a principle.

For a more specialized case, the same question was treated again in the case, *On behalf of Eastern Steamship Lines v. Germany*, Docket No. 436, pages 71 *et seq.*

Later the problem of causal connection again confronted the Commission, especially with regard to liability for concurrent injuries in the question of Germany's accountability for explosions of mines during the period after the armistice. The decision was rendered in "Opinions and Decision . . . on behalf of Eisenbach Brothers and Company *v. Germany*," Docket No. 5257, pages 267 *et seq.*

Within these limits the material content and extent of the liability had to be determined with a view to establishing the amount of damage.

For *physical* damages this was done by means of the *Lusitania* cases—the "Opinion in the *Lusitania* Cases," pages 17 *et seq.* This

⁸ The decisions of the Commission are cited according to the pages of the English text mentioned in the prefatory note.

decision was later supplemented by Decision VI, pages 195 *et seq.*, dealing with the question of the right of American nationals to make claims as the result of the death of non-Americans.

For *material* damages it was done in a more theoretical form in Decision III, pages 61 *et seq.*, dealing with reparation for property not destroyed but taken, and with the obligation to pay interest.

Later this decision was supplemented by the important Decision VII, pages 273 *et seq.*, dealing with liability for loss of profit and especially with the definition of "property" in connection with liability for destroyed property.

To the same province of delimitation of material damages belonged the definition of "naval and military works and materials" established in the "Opinion construing the phrase 'Naval and Military Works or Materials,'" pages 75 *et seq.*, in application to sunken vessels, for the destruction and damage of which Germany is not responsible, according to the Treaty of Versailles, in those cases where they are to be considered naval or military material.

This decision was later supplemented in "Opinions and Decision . . . on behalf of Christian Damson *v.* Germany," Docket No. 4259, pages 243 *et seq.*, wherein the definition of "civilian population" was treated in relation to the points of view underlying Decision V.

The liability for sunken vessels led to the question of the right of American insurers to make claims in connection with sunken non-American goods. After the two Commissioners had presented their diverging views to the Umpire, it was settled by a compromise which awarded to the American insurers of such non-American goods a part of their claims.

The question itself, under partially different circumstances of fact, came before the Commission again in connection with the extensive claims of American life insurance companies for insurance sums paid out for reasons of war. The claims which in themselves had arisen from personal damages were formulated by the American agent as "property" damages, and first decided for cases in which insurance payments had been made for the death of non-combatants. But over and above this the companies had also presented *claims for damages* suffered as the result of the death of combatants. The decision was rendered in the "Opinions and Decision in Life-Insurance Claims," pages 103 *et seq.*

After these tasks had been completed, attention was directed toward the more formal work of clarifying and delimiting the requirement of American nationality on the part of individuals. This

had been touched upon in Decision II but required further development. The related question of the formal and material right of American corporations to bring suit, especially with regard to possible foreign interests represented therein, was joined to this.

The nationality of individuals is treated in Decision V, pages 145 *et seq.*, and it was later supplemented by the "Opinions and Decision . . . on behalf of Maud Thompson de Gennes," Docket No. 2262, pages 213 *et seq.*, and "on behalf of Mary Barchard Williams," Docket No. 594, pages 221 *et seq.*, also by "Opinions and Decision . . . on behalf of Edward A. Hilson *v.* Germany," Docket No. 26 (the right of foreign seamen on American vessels to make claims), pages 231 *et seq.*

The corporation question was prepared in detail in two dissenting views of the Commissioners.

It was decided by the Umpire without statement of reasons in practical settlement of the individual cases (Chapter X).

An interesting individual question, not without more general significance, relates to the observance of the periods set for registering claims and to the attempt to evade them. Decision VIII deals with it (pages 347 *et seq.*). It is discussed below in connection with Decision II.

Between these decisions, Decision No. IV was for practical reasons rendered on the treatment of "estate claims," pages 141 *et seq.*

CHAPTER II

LEGAL NATURE OF THE CLAIMS

The draft of a bill of complaint presented by the American side at the opening sessions of the Commission provided that the claim be made by the United States, but "on behalf" of the injured party.

This formulation led to the question of the nature of the claim in substantive law with its far-reaching consequences.

In so far as so-called reparation claims proper in the narrower sense were concerned, i.e., the claims coming under Article 232 and Annex 1 *sub* Article 244 of the Treaty of Versailles, the planned procedure deviated from that provided by the Treaty of Versailles, whereby the Reparations Commission was to examine the claims and determine their amount in a single total with respect to Germany, with the provision that the eventual distribution among the individual parties concerned was to be reserved to internal legislation.

This type of estimating damages, in its method of computation, also reverts to the individual causes of damage, in so far as they form the basis for a reparation obligation on Germany's part according to the Treaty of Versailles. But otherwise it rests upon the theory of a total national reparation. This becomes clear from the fact that the individual participating states have by internal legislation employed different means of delimiting the number of their nationals entitled to indemnity,¹ and that the sums provided for internal reparations do not agree with those charged against Germany.² The point of departure for this method of computation is the theory of indemnification for damages to the national wealth. Not every diminution of wealth suffered by an individual national is a diminution of the national wealth.³

The American Government did not choose this course; it made the individual claim of its national as such the basis of the procedure.

¹ France, for instance, included insurance companies, while Belgium did not.

² England, for instance, provided a sum to meet claims resulting from deaths, but it was quite independent of the amount charged against Germany.

³ The theory reappears in the decision of the Umpire in the life insurance question, pp. 135 *et seq.*

Therein it followed an old American tradition growing out of the political conviction of its citizens,⁴ as it has been expressed before numerous claims commissions, of which the diplomatic history of the United States furnishes numerous examples. In accordance with the American point of view the government chose this course, although, as we have shown, the reparation provisions of the Treaty of Versailles prescribed the theory of a total national reparation. In practice, accordingly, difficulties often developed in applying to individual cases the provisions which had been formulated from a different point of view.

But both methods have one feature in common, viz., they are based upon the international relations of the states to one another. Of course the law resulting from the treaties concluded between the states is also "international law" in this sense. That the two methods are internally related follows also from the Treaty of Versailles, which chose the one method for the reparation claims and the other method for the claims arising from extraordinary measures of war, which also have a basis in international law—under a different form of state cooperation, to be sure.

Accordingly the method of pressing such claims can not be derived from any immanent quality of the claim as an international claim, but only from the will of the participating states.

For the work of the Commission the starting point was the fact that the Agreement of August 10, 1922, concluded between Germany and the United States for the American claims, prescribed the treatment of individual claims and hence fixed this method for the claims which were to be submitted to the Commission.

The legal nature of this claim thus pressed on behalf of the individual but in the name of the nation⁵ has a special interest not without practical consequences.

Such claims are also familiar to German law, e.g., in connection with the Samoan and Venezuelan troubles.⁶

⁴ Cf. the statements of the Umpire, p. 184, to the effect that these are the "rights and advantages" of the "nationals of the United States," whose protection the American Government has in mind. In their construction and execution they furnish a good example of the old American maxim of "government of the people, by the people, for the people."

⁵ This question was also discussed in connection with the prize court established by the Second Hague Peace Conference of 1907. Cf. Schramm, *Das Preisrecht in seiner neuesten Gestalt*, 1913, p. 412 and also p. 394.

⁶ In these cases, too, claims commissions were established.

But in the United States they were made the subject of special judicial and literary discussion.

The Commission used the American conception as its basis, assuming that a commission meeting in the United States for deciding upon American claims must decide the American claims pressed before it in accordance with the American method.

The espousal⁷ of such a claim by the government is in itself an internal procedure dependent upon the laws and intentions of the nation making the claim.

The effect of the espousal, however, is international and is subject to settlement in accordance with international law.

In itself such espousal of a claim is conceivable only when a national of one nation derives from a public law act a "compensation" claim against another nation.

The claim of an American shipper derived from a collision at sea with a German vessel in the service of the state therefore would not come under this category. But it would be different in the case of a civil law claim of a German creditor if the "damage" had originated by the public law act of denial of justice on the part of another country.

The legal consequence of the espousal, in so far as it concerns the legal position of the espousing state, was treated by both Commissioners (pp. 153-4 and 168 *et seq.*), and especially by the Umpire (pp. 190-1), in connection with the question when the requirement of American citizenship must be satisfied, discussed in conjunction with the "nationality of the claim." This matter had already been touched in Decision II, pages 5 *et seq.*

By such espousal the state which considers itself prejudiced in the person or property of its nationals assumes the sole responsibility for the manner and extent of pressing the claim. It receives exclusive control thereof, and is in a position to prosecute it, settle it by compromise, or abandon it according to its own discretion as dictated by the interests of the nation as a whole.

Accordingly it can make the espousal depend upon general conditions or such special conditions as it may establish for the individual case.

The general conditions established by the United States have been laid down and published by it.

Special conditions were established by the American Government for valorization claims to be pressed before the Commission, i.e., claims for

⁷ This is the term used by the American Commissioner. Cf. his opinion in Decision V.

the restoration of the value of German paper money, in which the government made espousal dependent upon renunciation, on the part of the claimants, of other definite legal remedies to which they were entitled.⁸

It is not certain to what extent the state may use the awarded and collected sum for other purposes.

In so far as the decisions in question were obtained by fraudulent manipulations, the question has been decided in the affirmative by the American courts.⁹

In his interesting remarks the Umpire quite generally denied the right, in other cases, to use the sum for different purposes, at least in awards rendered in favor of definite individuals (p. 191 and note 31). According to his interpretation the sums paid in are "trust funds" for the rightful claimants.

And this at least economically close relation between the damage of the individual and the right of the nation to lodge a claim may even come into play if the indemnity is not collected, in so far as, according to Borchard, *Diplomatic Protection of Citizens Abroad*, Section 144, page 366, a government becomes liable to indemnity in case it "negotiates" an individual claim taken up by it in the common interest, i.e., abandons it in lieu of other compensation.

So far as the legal position of the individual is concerned, it is reflected most clearly in the treatment of the collected sums as "trusts" of the claimant and in the eventual indemnity claim just discussed. But over and above this, the significance in private law is, for example, revealed in the fact that the private claim has or preserves certain functions in civil law. Thus it may be assigned by cession and realized by sale in the case of bankruptcy.¹⁰

To this extent it might be termed a conditional right, i.e., conditioned by its advocacy through the state.

But this construction is not logical. For on the other hand the individual claim, through its espousal by the state, is merged in the claim of the nation. According to American conceptions it is merged in the national claim. Hence at the moment when it becomes actually

⁸ See *Juristisches Wochenblatt*, 1925, p. 1212.

⁹ See the Weil and La Abra claims in Moore's *Arbitrations*, pp. 3424 and 1327.

¹⁰ In the decision of *Williams v. Heard*, 1891, 140 U. S. 529, the Supreme Court of the United States decided that such claims of an American represent "property," viz., "that a claim of an American national against Great Britain was 'property.'" Cf. also the remarks of the Umpire in decision on p. 186, English text.

existent, i.e., at the time of its espousal by the state, it is merged so far as the individual claimant is concerned.

In any event a very close relation is thereby established between the individual claim and the international claim of the nation, revealed also in the fact that a state may lodge claims only on behalf of its nationals.¹¹

An additional, more external consequence is that—at least before this Commission—the claims can be defended only by agents of the state.

But a much more important consequence is the delimitation of the jurisdiction of the Commission following from this legal nature of the claim.

It is only the international foundation of the claim whereupon the plaintiff state supports itself with respect to the other state, and only this international phase is subject to the decision of the Commission, in so far as its competency is not broadened by express agreement, as occurred here in a certain sense with regard to the private debts (cf. Chapter I).

All other disputed points of a private law nature, perhaps connected with the case but not expressly submitted to the Commission for decision, do not therefore lie within its competency.

If, for example, goods have been sunk, only the incident related to the sinking is subject to the decision of the Commission. A possible dispute as to who—perhaps on the basis of a partnership relation or in consequence of an inheritance case—is jointly entitled to the proceeds must be decided by the competent courts.

Such a dispute would touch the jurisdiction of the court only in so far as the nationality of a “joint claimant” becomes relevant, since for a non-American the presumption of the espousal of this part of the claim by the state would be out of the question.¹²

The question of jurisdiction became particularly live with reference to claims of the families of persons who had been killed. It became a subject of negotiation and decision in connection with the so-called Lusitania cases and was discussed in Decision II, pages 8–9, and also in the German vote on Decision VI on pages 200 *et seq.*

The legal nature of the claim on the part of such families assigns its origin to the effects of the death, i.e., to the incident of liability in public law.

Hence the computation of the injury suffered by the individual

¹¹ See the chapter on the principle of nationality.

¹² Cf. also Chapter VIII and Decision VII.

survivor is a matter for the Commission. The factors involved in the compensation claims of the families in this connection are no more subject to the private law of an individual country than is the question of liability for the incident itself from which the international claims for the death are derived. They are a part of the facts of the international case. Their judgment and decision are accordingly a matter for the Commission.

The duty of the Commission in such cases is, as the Commission decided unanimously in Decision II, pages 9-10, not the distribution, among various persons, of a fixed sum charged against Germany as the result of a death, but the determination of the amount of individual injuries suffered by relatives, which injuries were pressed jointly as a matter of form but individually as a matter of intrinsic fact.

But much greater difficulties were caused by the legal nature of the claim in those cases in which the Commission had to decide on claims of private American creditors against private German debtors.

The liability of the German Reich for certain obligations of private German debtors, as specified by the treaties of Berlin and Versailles, necessitates a twofold qualification of such claims. They are of an international and hence of a public law nature in so far as they are pressed against the German Reich. But at the same time they retain their private law character.

It is not unobjectionable procedure in such cases to assume that by virtue of the espousal there is a "merger" of the claim with the claim of the state and then to deduce all the consequences thereof.

Even in the characteristic consequence assigned to the merger by the American side whereby the obligated state fulfills its obligation by making payment to the other state and then has neither the obligation nor even the right to concern itself about the remittance of the payment to the individual claimant, the theory meets with objection. For in the settlement of private obligations by a state acting as the guarantor of the private debt, that state has a direct interest in providing that the payment shall get into the hands of the private creditor and that thus the guaranteed private debt be canceled.

If on the other hand we adhere to this theory, it follows that the private creditor loses the right to dispose over the claim at the moment his claim is "espoused" by the American Government. He will no longer be able to cancel it by compensation, nor secure it by arrest, nor press it before the regular courts of law.

The Commission did not by any means overlook the difficulties in-

herent therein. It took account of them, for instance, in all so-called valorization claims in which the state's obligation of valorization was regulated by compromise, but in which the private obligation of valorization remained open as a result of the same compromise, in so far as it restricted itself to rendering the award proper only against the German Reich, and to determining in figures, only as an intrinsic part thereof, the private debt in marks forming the basis of the guarantee and of the state's obligation of valorization.

For the rest, the Commission took the position that a theoretical decision of the above questions of doubt did not lie within its competence.

CHAPTER III

THE NEUTRALITY CLAIMS

Among the problems which occupied the Commission, the question of Germany's liability for claims arising during the period of American neutrality occupied the foremost position materially and temporally.

Was Germany accountable only for acts which violated norms of international law, or which according to the principles of international law entailed compensation? Or was Germany accountable—in accordance with the American view—for every act, regardless of whether it was contrary to international law or in harmony therewith?

The points of view and arguments presented by both sides have their origin in the treaties of Versailles and Berlin. Thus far, especially from the point of view of international law, they can claim no general interest. But two factors justify a discussion of the question. The first is the political and historical position of the question in the genesis of the treaties of Versailles and Berlin. The second is the circumstance that a formulation, which is identical in the salient points, is found also in other international treaties concluded by the United States, so that it seems essential for future clarity that we realize the possibility of so divergent an interpretation in case of a possible subsequent application of the same formulation.

The claims here involved, which we shall briefly call neutrality claims, are mentioned both in the Treaty of Versailles and in the Treaty of Berlin.

In the Treaty of Versailles it is Section 4 of the Annex to Article 298 which deals with them. In Articles 297 and 298, the effect of the extraordinary war measures applied by both sides with respect to enemy property found in the country, and also Germany's liability for such measures as were applied by her are regulated. In the Annex to Article 298 the formal validity of vesting orders on both sides (par. 1), the exclusion of every German claim or action (par. 2) and the expression "exceptional war measures" are clarified. In connection therewith, i.e., in the further regulation of the treatment of German property confiscated in enemy territory, it is provided in paragraph 4 that this German property shall be liable for certain claims against Germany in a

fixed sequence. And among the claims thus listed in sequence there is also that of "claims growing out of acts committed by the German Government or by any German authorities since July 31, 1914, and before that Allied or Associated Power entered into the war."¹

And similarly Section 5 of the Knox-Porter Resolution incorporated in the Treaty of Berlin provides that "All property . . . of all German nationals, which was, on April 6, 1917, in . . . the possession or under control of . . . the United States of America . . . shall be retained by the United States of America and no disposition thereof made . . . until such time as . . . suitable provision" has been made "for the satisfaction of *all claims* . . . of all persons . . . who have suffered, through the acts of the Imperial German Government, or its agents, . . . since July 31, 1914, loss, damage, or injury." To be sure, as appears from the text of the provision in question, quoted in full in the footnote, the claims are described here in detail, but only in the sense of extending the sphere of those entitled to participate in the lien on German property, not in the sense of a more precise definition of the *material* character of the claims themselves, for here too we read only of "the satisfaction of *all claims* against said Governments . . . of all persons . . . who have suffered, through the acts of the Imperial German Government, or its agents, . . . loss, damage, or injury to their persons or property."²

¹ Par. 4 reads as follows: "All property, rights and interests of German nationals within the territory of any Allied or Associated Power and the net proceeds of their sale, liquidation or other dealing therewith may be charged by that Allied or Associated Power in the first place with payment of amounts due in respect of claims by the nationals of that Allied or Associated Power with regard to their property, rights and interests, including companies and associations in which they are interested, in German territory, or debts owing to them by German nationals, and with payment of claims growing out of acts committed by the German Government or by any German authorities since July 31, 1914, and before that Allied or Associated Power entered into the war."

² The text of Sec. 5 is as follows: "Sec. 5. All property of the Imperial German Government, or its successor or successors, and of all German nationals, which was, on April 6, 1917, in or has since that date come into the possession or under control of, or has been the subject of a demand by the United States of America or any of its officers, agents, or employees, from any source or by any agency whatsoever, and all property of the Imperial and Royal Austro-Hungarian Government, or its successor or successors, and of all Austro-Hungarian nationals which was on December 7, 1917, in or has since that date come into the possession or under control of, or has been the subject of a demand by the United States of America or any of its officers, agents, or employees, from any source or by any agency whatsoever, shall be retained by the United States of America and no disposition thereof made, except as shall have been

It may suffice here to call attention to the Treaty of Washington of May 8, 1871, between the United States and Great Britain which submitted the American claims arising from the well-known Alabama dispute to an arbitral court and which thereby became the occasion for a decision of far-reaching importance which, in so far as it led to a condemnation of Great Britain, saw the decisive criterion in the illegality of the British acts, not simply in the "acts committed by England." Article XIIa in the here relevant portion reads: "The high contracting parties agree that all claims on the part of corporations, companies, or private individuals, citizens of the United States, upon the Government of Her Britannic Majesty, *arising out of acts committed against the persons or property* of citizens of the United States during the period between," etc.³

In connection with this formulation, which as we see is not restricted to the treaties of Versailles and Berlin, the German side called attention to the fact that in both places in which the neutrality claims are mentioned in the treaties, we find not a material definition of the individual categories of claims made against Germany but merely an enumeration thereof for the purpose of determining the categories of claims for which German property is liable.

heretofore or specifically hereafter shall be provided by law until such time as the Imperial German Government and the Imperial and Royal Austro-Hungarian Government, or their successor or successors, shall have respectively made suitable provision for the satisfaction of all claims against said Governments respectively, of all persons, wheresoever domiciled, who owe permanent allegiance to the United States of America and who have suffered, through the acts of the Imperial German Government, or its agents, or the Imperial and Royal Austro-Hungarian Government, or its agents, since July 31, 1914, loss, damage, or injury to their persons or property, directly or indirectly, whether through the ownership of shares of stock in German, Austro-Hungarian, American, or other corporations, or in consequence of hostilities or of any operation of war, or otherwise, and also shall have granted to persons owing permanent allegiance to the United States of America most-favored-nation treatment, whether the same be national or otherwise, in all matters affecting residence, business, profession, trade, navigation, commerce and industrial property rights, and until the Imperial German Government and the Imperial and Royal Austro-Hungarian Government, or their successor or successors, shall have respectively confirmed to the United States of America all fines, forfeitures, penalties, and seizures imposed or made by the United States of America during the war, whether in respect to the property of the Imperial German Government or German nationals or the Imperial and Royal Austro-Hungarian Government or Austro-Hungarian nationals, and shall have waived any and all pecuniary claims against the United States of America."

³ Cf. for instance also the Claims Convention between the United States and Chile of August 7, 1892: "claims . . . arising out of acts committed against the persons or property," etc.

In accordance with the very rules of the interpretation of treaties, with regard to which, as the final remarks in the *Lusitania* decision, page 31 (next to last paragraph), show, the Umpire too accepted the principle that the text of the treaties shall be strictly construed against those who framed the treaty and derive rights therefrom,⁴ the broad American interpretation seemed untenable, since nowhere in the text of the treaty so far-reaching and grave a deviation from the principles of international law as was now maintained by the American side is even suggested.

The genesis of the Treaty of Versailles and the position taken by the American delegation in France could also be referred to. This delegation, through its speaker, John Foster Dulles, took the position that the exchange of messages of November 5, 1918, between the United States—acting also in the name of the other enemy powers—on the one hand, and Germany on the other, created a *binding peace agreement* for all powers concerned. This agreement was considered as having been made when the allied powers declared that they were ready to conclude peace on the basis of the message of the President of the United States to Congress of January 1918, and on the basis of conditions established in the other messages, with two reservations. This declaration was the reply to the formal declaration of Germany that it would accept peace on this basis. The affirmative reply of the powers—with the two reservations—was transmitted to Germany by Secretary of State Lansing, so that with the approving receipt of the declaration of acceptance with two reservations the peace was formally concluded.⁵ In this Mr. Dulles too saw the “form and substance of an agreement.”⁶

Accordingly it was interpreted to be the sole duty of the conference in Versailles to “apply . . . the peace terms” (Baruch, *op. cit.*, p. 330) and to determine the details of such application.⁷

⁴ “The language, being that of the United States and framed for its benefit, will be strictly construed against it.”

⁵ Baruch, *The Making of the Reparation and Economic Sections of the Treaty* (New York, 1920), p. 327.

The agreement “came into being, when the Allies, after carefully considering this correspondence which had passed between the United States and Germany,” stated, “They declare their willingness to make peace with the German Government on the terms of peace laid down by the President’s address to Congress of January, 1918, and the principles of settlement enunciated in his subsequent address.”

⁶ Cf. also Temperley, *A History of the Peace Conference in Paris* (London, 1920), p. 381.

⁷ Temperley, *op. cit.*

“As to the terms of peace and the principles of settlement the German and American

At that time the American delegation considered itself bound by these conditions. But it interpreted them to the effect that in the restriction of Germany's obligation to repair damages arising for the civilian population from the "offensive" war there lay no renunciation of rights derived from the *violation of international obligations*. The delegation deduced from this that all claims not expressly stipulated by treaty were justified only in so far as they had a basis in international law, "arising from illegal acts."⁸

Referring to this attitude of the American delegation, the German side stressed the fact that paragraph 4 of the Annex to Article 298, which owes its inclusion, as the so-called "Lusitania Clause," to an American suggestion, must be interpreted in accordance with this unequivocal position, all the more so since President Wilson⁹ too, in the dispute concerning the extension of the German obligation to make reparation for pensions, support and payments to war prisoners—clauses 5, 6 and 7 of Annex 1 *sub* Article 244—adhered to the principle that the power to extend the German obligations does not establish the right to do so.¹⁰

Governments reached general agreement that such terms and principles shall be those stated by President Wilson in his Address to Congress on 8th January 1918, and in his subsequent address, particularly the address of the 27th September, and that the *object of peace discussion would be only to agree upon the practical details of this application.*"

⁸ Baruch, *op. cit.*, pp. 295–6.

"We take the view that the terms of peace proposed and accepted are not to be construed as waiving any clear right of reparation due under accepted principles of international law. We thus recognize that our agreement with Germany is not in derogation of those principles of jurisprudence upon which the French memorandum and upon which Mr. Hughes' address purport to base themselves. But we are compelled to recognize that in so far as we base our claims, not upon contractual law but on the law of torts, we are restricted to damage arising from *illegal* acts. It is not enough that an act be immoral, that it be cruel, that it be unjust, unless at the same time it be illegal. It is the quality of illegality alone which in law gives rise to a right of reparation. International law and all municipal jurisprudence of all civilized nations are in accord in this respect.

"Accordingly it is the American proposition that where the enemy has committed an act clearly violative of international law as existing at the time of the commission of the act, he is liable to make reparation for the damage caused thereby."

⁹ Edward M. House and Charles Seymour, *What Really Happened at Paris* (New York, 1921), article by Lamont, p. 270.

"The President approved the stand of the American delegation, declaring that the contention on the part of the other delegations that war costs should be included is clearly inconsistent with what we deliberately led the enemy to expect and cannot now honorably alter simply because we have the power."

¹⁰ This argumentation is not shaken by the fact that later the President yielded

Thus it was denied that paragraph 4, in text and purpose, has the far-reaching significance which is now claimed for it and in connection therewith it was also denied that Section 5 of the Knox-Porter Resolution has so far-reaching a significance. In support of the claim that this resolution can not be applied by America over and above the tenor of the provision of Section 4 *cit.* of the Treaty of Versailles, both the text of the resolution, which does not mention the material character of the claims for which German property is to be held liable, and the so-called Dresel note were cited.

In the course of the negotiations leading to the conclusion of the Treaty of Berlin, the German Government attached great importance to avoiding that the excessive burdens imposed upon it by the Treaty of Versailles be increased by still greater obligations, and hence it endeavored to secure assurances in this regard by means of inquiry. In his reply of August 22, 1921, the commissioner of the American Government, Mr. Dresel, stated that the American Government did not interpret the Knox-Porter Resolution as implying the establishment of new rights against Germany and that the paragraph in question did not create new obligations for Germany over and above those established by the Treaty of Versailles. The reply declares moreover that according to the belief of the Department of State there is no difference between the provisions of the Knox-Porter Resolution and those of the Treaty of Versailles, with the exception of the provisions of Section 5 of the Knox-Porter Resolution referring to the satisfaction of American claims.¹¹

Since according to the German view this differentiation mentioned in the reply obviously concerned only the *extent* of the liability of German property seized in the United States, which liability was extended by Section 5 of the resolution to such claims as come under the category of reparation claims proper, according to the terminology of the Treaty of Versailles, and for which German private property would not be liable under the conditions of the Treaty of Versailles, the German side defended the view that Section 5 of the resolution implied no ex-

in the pension claims, etc., for on his return from Europe and in opposition to his advisers, who declared that logic was against such claims, he did so with the words: "Logic! Logic! I don't give a damn for logic. I am going to include pensions!" House and Seymour, *op. cit.*, p. 272.

¹¹ "It is the belief of the Department of State that there is no difference between the provision of the proposed treaty relating to rights under the Peace Resolution and the rights covered by the Treaty of Versailles except insofar as a distinction may be found in that part of Section 5 of the Peace Resolution, which relates to the enforcement of claims of United States citizens for injuries to persons and property."

tension of paragraph 4 of Annex 2 of Article 298 of the Treaty of Versailles, and that its purpose, as well as that of the aforesaid paragraph 4, was merely to enumerate the existing claims, not to create new claims.

It was not overlooked that apart from reparation claims for pensions, etc., which were incorporated in the Treaty of Versailles in clear violation of the agreed conditions of November 1918, the principles of liability established in Annex 1 *sub* Article 242 for reparations proper also exceed the November agreement. But according to the German conception this did not modify the general principle that in so far as modifications and extensions were not expressly made, the November agreement with the supplementary Dulles interpretation must be considered as being still in force.

The very fact that for the basic formulation of German liability in Article 232 the allies used the text of the November agreement and then by the peculiar circuitous means of general reference to an annex and by the inclusion in this annex of other more sweeping liability provisions, for instance for claims of the governments themselves (instead of nationals) for reparation of pensions, etc., effected the extension of German liability to principles not contained in the November agreement—this very fact was cited to show that the allies too considered the express inclusion of deviating or extended liability provisions in the treaty as being necessary for their validity.

As has been stated, the American side maintained that both by paragraph 4 *sub* Article 298 and by Section 5 of the Knox-Porter Resolution every damage wrought by an act of Germany or its agents entails reparation, and that international points of view, especially the question of the illegal nature of the acts committed at the time, must be disregarded altogether.

At the request of the Umpire, to whom the question was presented for decision after the two Commissioners had disagreed, not only the general question whether the claim must be founded in international law, but also the special question to what extent Germany is accountable in international law for acts committed in sea warfare, and the question of the justifiability of the German submarine warfare were discussed.

It would exceed the scope of this sketch to recapitulate the very detailed arguments of the German agent. We must refer here to the two documents,¹² the second of which endeavored to furnish the proof, supported by extensive material, that the German Government for its

¹² Claim No. 9, brief and opposing written statement on behalf of Germany, and Annex thereto, *Sea Warfare and International Law during the Late War*.

part made every effort to keep its sea warfare within the limits prescribed by the Declaration of London,¹³ and that it went beyond these limits with reluctance and only *as a means of retaliation* against the British conduct of war, which deviated more and more from the principles recognized by international law.

In conjunction with this extensive material there were very interesting pleas made before the Commission, and the question was also discussed to what extent, in the case of acts which may be justified from the point of view of retaliation but deviate from existing norms, a neutral would be entitled to reparations, in other words to what extent such acts would come under the legal acts of a belligerent power which, however, are liable to indemnity with respect to neutrals.

But these and other related questions remained undecided because the Umpire decided the general basic question against Germany, and in Administrative Decision No. I held Germany responsible, in so far as it was not a question of claims of the American Government itself, for all "acts of Germany or her agents in the prosecution of the war," regardless of the provisions of international law.

With the consent of both governments, the reasons for this decision were not published and therefore can not be quoted.

But the Umpire took up the question again in connection with his decision on the claims of the life insurance companies¹⁴ and also in the far-reaching Decision VII.¹⁵ To this extent the points of view which guided the Umpire in the decision in question may be published and are subject to discussion.

In the decision on the claims of the life insurance companies, he admits that the two relevant passages in the treaties of Versailles and Berlin contain no definition of the "claims" treated there.

But he assumes that these claims are "obviously in the nature of reparation claims" in the narrower sense.

He proceeds from the thought that the United States, as one of the victorious powers in the war, is entitled to the same treatment with regard to indemnification of its nationals as are the nationals of the other powers during the same period. Otherwise he would consider the United States "penalized for its neutrality," which condition it was the purpose of paragraph 4 of the Annex *sub* Article 298 of the Treaty of

¹³ Cf. the remarks of the Umpire in the War-Risk Insurance Premiums Opinion, pp. 34-5.

¹⁴ See p. 130.

¹⁵ See pp. 312, 316, 322, 327 and 329.

Versailles to avoid. "The position of the United States . . . entitled it to demand that, . . . its nationals should not be penalized for its neutrality, but should, with respect to all damages caused during the period of American neutrality by the acts of Germany, be placed on a parity with the nationals of its Associated Powers suffering damages during that period." (Decision p. 130.)

In Decision VII the circumstance is again touched—page 316—that through the much discussed paragraph 4 of the Annex to Section IV of Part X provision was made for the neutrality claims not considered up to that point in the draft of the Treaty of Versailles.

Later in connection with the Knox-Porter Resolution—page 327—it is decided that Section 5 of the resolution, in so far as the neutrality claims are concerned, adopted the text of paragraph 4, and in full agreement with the point of view always maintained by the German side and in accord with the German interpretation of the Dresel note, it is stated that the Knox-Porter Resolution does not go beyond the indemnity obligation imposed by the Treaty of Versailles—pages 327, 326.

And in conjunction therewith—page 329—and again in agreement with the German arguments—the important conclusion is reached that the expressions employed in the Knox-Porter Resolution, when employed in the same connection, must have "the same meaning."

Thereby the German line of reasoning with reference to the extent of the liability for neutrality damages was given a support which seemed to the Germans themselves not unimportant also as regards Section 5 of the resolution. For meanwhile, in a decision of the Permanent Court at The Hague¹⁶ of September 12, 1924, on a Graeco-Bulgarian dispute which turned upon the interpretation of an identical and corresponding provision of the Treaty of Neuilly, it was pronounced with reference to paragraph 4 of the Treaty of Versailles here in question and its origin due to the Lusitania case that the expression used in paragraph 4 means acts contrary to international law—"the expression 'acts committed,' which must moreover be interpreted taken as it stands, contemplates *acts contrary to the law of nations and involving an obligation to make reparation.*"

By this decision that interpretation is precisely established which the arbitrator Borel, who frequently served in Anglo-German disputes, had already applied in the decision *Chatterton v. German Reich* of

¹⁶ Compare also the decision rendered in the same sense by the Graeco-German Mixed Arbitral Tribunal in the case of Constantin Vanjicoulas (Gr. 166) and Karmatzucas v. Germany (Gr. 373), August 23, 1926.

November 8, 1923, whereby the framers of the treaty conceived "acts committed" to be "acts to be blamed," "acts which were wrong."¹⁷

The legal consequences of these decisions are indisputable. Even if their material accuracy, which can not be discussed in detail here, were more doubtful than the German view makes it appear, it would at least show that paragraph 4 admits various interpretations, of which the one most favorable for Germany would have to be applied, according to established rules.

If we consider also, as the Hague decision emphasizes, that it was the *Lusitania* incident which led to the embodiment of paragraph 4 in the treaty at the insistence of the American delegates, and that these same American delegates through their leader¹⁸ proclaimed the limitation of German liability to acts contrary to international law (in so far as no other agreement had been reached by treaty), but on the other hand left no doubt as to their condemnation of the sinking of the *Lusitania* as an act contrary to international law, this circumstance afforded a certain clue for the intention upon which paragraph 4 is based. This intention, over and above the simple question of the application of rules of interpretation, speaks in favor of the material accuracy of the German interpretation.

At the same time the German side could point to the fact that the "position of equality" of American nationals and nationals of the other belligerent countries was only apparent and had not been fully carried out in the interpretation of the Umpire.

The equality is only apparent inasmuch as it is chronologically based upon the rights of France, Belgium and also England. For these powers, which entered the war during the first days, the period to which the reparation provisions apply is identical with the period of the war and includes the period of American neutrality, while for other belligerent countries, as, e.g., Italy and Rumania, the privileged provisions on reparations go into effect at a later period, i.e., at the time these nations entered the war. Compare Article 232, paragraph 2, which declares the reparations provisions to be applicable for damages

¹⁷ To be sure, in one of his decisions the Arbitrator rejected a limitation of the application of par. 4 to acts contrary to international law—"Par. 4 is not limited to such acts as constituted a direct violation of a clear rule of international written law." On the other hand, in a later decision, *J. F. Mellentin v. German Reich*, he declared expressly that "the Arbitrator does not think that the line which he has followed shows any discrepancy with the opinion given by the High International Court at The Hague."

¹⁸ Cf. note 8, *ante*, p. 28.

which occurred "during the period of the belligerency of each . . . Power against Germany."

Hence the parity envisaged by the American side, in this interpretation, signified a favored treatment of American neutrality claims over that accorded any other power which entered the war at a late date.

But on the other hand this parity did not exist in reality either, for the words "acts committed by the German Government," etc., excluded Germany's liability for reparation claims proper in the case of certain acts of her allies and even of her enemies, as well as in the case of damages suffered by the governments as such. Accordingly the intention to create a condition of parity was at any rate not ascertainable from the only text of paragraph 4 in question and of Section 5 of the Knox-Porter Resolution which was known to Germany at the time of the conclusion of the Treaty of Versailles and at the time of the conclusion of the Treaty of Berlin.

In this respect, too, the German side believed, both the pleas against the material accuracy of the American interpretation and the validity of generally recognized rules of interpretation were in Germany's favor.

The Umpire for his part carried out the idea of the parity of American neutrality claims and the "reparation" claims of the Treaty of Versailles in Germany's favor, inasmuch as he declared that the clauses of the Annex [I] *sub* Article 244, which limits Germany's liability in part, is applicable also to the American neutrality claims.

This was done with motivation in the decision published in the second volume (Decisions and Opinions, p. 843 of the text), in the case of the American-Hawaiian Steamship Co., Docket No. 6454. It involves the injury resulting from the damage caused to the steamer *Kansan* by a German mine on December 6, 1916, at St. Nazaire. The steamship company claimed among other things compensation for the loss of profit as the result of the temporary disability of the steamer. The Umpire rejected this part of the claim, because under the special provisions of Annex [I] to Article 244 there is no basis for a claim for compensation as the result of loss of use or loss of profit.

CHAPTER IV

NATIONALITY OF THE CLAIMS¹

As has already been pointed out,² the formal public law character of a claim is controlled, from the American point of view, by the principle that the personality in which the claim arose³ must at the moment when the claim arises have a right to the protection of that state which presses the claim. The point of view whereupon this conception is based is that in the person of him who is entitled to protection the nation itself is injured, and that hence the injury to the nation is conditioned by the allegiance of the injured person to it.⁴

The person may be injured in two respects, viz., first in regard to purely human, i.e., physical aspects—in life, health, honor and liberty; and second, economically—in property or wealth.

A more detailed delimitation of such injury to property as would

¹ This chapter is intended to accompany Decision V (p. 145) and De Gennes (p. 213), Williams (p. 221) and Hilson (p. 231) decisions. Purely governmental claims, arising for instance from the sinking of vessels owned by the state, were not considered in the decision or in this discussion.

² See the chapter on the legal nature of the claim.

³ The real material claim is meant which must have originated in the person of a national of the claimant state.

Hence a claim is rejected which arises from the death of an American who perished on the *Lusitania* and whose administrator, upon whom title devolves, was also an American, but whose heirs were British. The fact that the "naked title" was American was not considered sufficient as against the fact that the real interested parties were British. Claim No. 2191, *Evan Jones v. German Reich*.

On the other hand compensation was granted in a case where an American company had a branch establishment in Germany which was formally independent and was managed by two proprietors, one of whom was British. Here the British nationality was disregarded since the "whole benefit" of the German branch accrued to the American company, and the claim, which was justified on the supposition that the claimants were Americans, was admitted. It is clear that the principle of "nationality" was thus considerably weakened in its application.

We shall revert to this in the chapter on causal connection and material obligation for compensation.

⁴ This principle was also recognized by the Commission in Decision II, p. 8, rendered by the Umpire at the request of the national Commissioners. Under the head "Original . . . ownership of claim" it is stated: "The enquiry is: Was the United States, which is the claimant, injured through injury to its national? It was not

justify intervention on the part of the state would lead too far afield.⁵ It will suffice to define the relation of the person entitled to protection and the claim in question by saying that at the time of its origin the claim must belong to a national of the state pressing it.

If this is not the case, the claim must be rejected regardless of other qualifications.

The application of this principle led to the rejection of many cases by the Commission, e.g., in all cases where originally non-American claims had become American by virtue of inheritance.

To this principle is joined another, viz., that the right to protection of the injured party must extend beyond the period of injury to a definite later period, concerning the fixation of which there was also a difference of opinion in the Commission, to be discussed later. It is the doctrine of the continuity of the nationality of the claim, which the Commission applied in Decision II, page 8, where it was stated under the heading "continuous ownership of claim," with reference to a number of decisions and authorities mentioned in note 4, that "the claim for such loss must have since [i.e., since the decision] continued in American ownership."

Later the American Commissioner⁶ in his opinion on the nationality of claims questioned the principle, saying that the national character of a claim is proved by the fact that the nation itself was injured by the injury of one of its nationals, and that it is consequently not admissible to make the right of a government to espouse and press such a claim dependent upon the further requirement that the claim, given a national character by virtue of its very origin, should, at a later period too, in so far as the person of the originally injured is concerned, sat-

so injured where the injured person was at the time of suffering the injury a citizen of another state."

But cf. the remarks of the Umpire in Decision V, p. 177 (last paragraph).

It is still more explicitly stated by the American Commissioner in his Opinion on the "nationality of claims." There we read (p. 151): ". . . the right of a government to espouse a claim arises on the general principle that the injury to a national is an injury to the nation . . ." and (p. 154): ". . . the principle of international law above mentioned, that the basis of the right of the Government to present a claim internationally is that the injury to the national is an injury to the nation, for which it is entitled to claim reparation."

⁵ Cf. Chapter VIII on "The extent of Germany's Obligation to give Compensation for Damage in Respect of Property, 'Loss', and Causal Connection."

⁶ The Umpire too later expressed doubt as to the extent and binding force of this rule. Compare Decision V, p. 177.

isfy, in this same person of the national, the national requirements necessary at the time of origin.

This argument, the importance of which should not be overlooked, though it is not in agreement with international practice or with the practice of the American Government itself, necessitates a brief discussion of the principle first mentioned, whereby "the claim must be nationally owned at the time the claim accrued."

Though it is clear that the injury of the nation wrought by the injury of the individual is the basis for the right of the nation to press the claim, yet the distinction between a real injury to the nation as such and the consequences of the injury of an individual (leading namely to the assumption that the nation has been injured) must be borne in mind. The same process which, e.g., in case an injury is suffered by the ambassador of a nation, represents a direct injury of the nation itself, causes only in its consequences a more theoretical injury to the nation in case it were directed against a private individual entitled to protection. As American writers have expressed it, it is only an indirect injury. "Whoever uses a citizen ill, indirectly offends the state," says Vattel⁷ and also Borchard.⁸

This indirect form of offense was instrumental in establishing and justifying the principle of a necessary "continuity" of the "national ownership of the claim." The "indignity" of indirect injury can be regarded as important enough to set the apparatus of national intervention in motion only in case the injured person still actually owes allegiance to the plaintiff nation at the time of such intervention—or until the time of the decision of the claim—or in case the claim still really accrues to a national of that nation. Thereby the preponderating international action is freed of its arbitrary and discretionary nature and appears in the light of a real norm in international law. Only the force of a legal norm could prompt international courts of justice to recognize this principle. For the undeniably frequent rejection of claims in which the continuity of ownership was not observed is conceivable only in case the courts denied the discretionary power of the plaintiff state to press claims lacking continuity and being national only in origin, thus discrediting the opposite point of view taken also by the American Commissioner.⁹ But they were justified

⁷ Vattel, Chitty-Ingraham ed., Phila., 1855, Bk. II, Chapter VI, Sec. 71.

⁸ Borchard, *Diplomatic Protection of Citizens Abroad* (New York, 1916), p. 351, Sec. 134: "The indirect injury which the state sustains by an injury to one of its citizens warrants bringing into operation the state's protective machinery."

⁹ See Ralston, *International Arbitral Law* (Boston, 1910), Chapter V, p. 105;

in this only if they recognized a legal principle which binds international intercourse in this respect.¹⁰ Hence the German side emphasized the fact that the Supreme Court of the United States applied this principle in a case growing out of the activity of the Franco-American Claims Commission¹¹ and had expressly stated that the Franco-American Commission had "no authority" to decide upon claims "except as held, both at the time of their presentation and of judgment . . . by citizens of the other country," and that the Court considered the legal effect of this principle so binding¹² that it designated every award not in harmony with it as "invalid and void."

Hence the German Commissioner, in agreement with the German agent, adhered to the principle that the continuity of the nationality of the claim is requisite.

This basic disagreement of the two Commissioners had no practical consequence since the American Commissioner recognized that in view of the actual treatment of such claims in both states, in accordance with that principle, there is in the present case an agreement on the part of both states to the effect that "both Governments understood and expected that this practice [i.e., of continuity] would be applied with respect to claims under that Treaty."¹³

But the difference of opinion retains its general significance in so far as, according to the American interpretation, it depends upon the free will of the claimant state, in default of a special agreement, whether and to what extent it will take account of the idea of continuity, while according to the German view deviations from the existing practice are admissible only with the consent of the state against which the claim is directed.

An effect of the American conception, which emphasized the one-sided right of determination on the part of the claimant state, soon

Borchard, *Diplomatic Protection*, Sec. 134, p. 352: "This result has been established by numerous arbitral decisions."

¹⁰ Of course such a legal principle could be modified at any time by agreement.

¹¹ *Burthe v. Dennis*, 133 U. S. 514 (1889): "It matters not by whom the claim may have been presented to the Commission. That body possessed no authority to consider any claims against the Government of either the United States or of France, except as held, both at the time of their presentation and of judgment . . . by citizens of the other country."

¹² "Binding" only in the sense that it bound in default of an agreement to the contrary, not in the sense that it could not have been modified by express international agreement.

¹³ P. 152.

appeared in the treatment of the subordinate question concerning the period within which the continuity should be required.

The American Commissioner took the position that even if, as here, the requirement of continuity of the national qualification of the claim beyond the period of its origin must be taken into account, such continuity is necessary only up to the time when the claimant state espouses the claim in accordance with its own free will and choice.

The period of such espousal should accordingly be identical with the period up to which there must be continuity of the nationality of the claim.

This period, the American Commissioner urged, was the time of the coming into force of the Treaty of Berlin, i.e., in accordance with Article III of the treaty, the time of the exchange of ratifications (November 11, 1921).

He motivated this argument by the legal effect of such espousal on the part of the state, which signified a "merger"¹⁴ of the private claim into the national claim. Thus, he argued, the individual claim became a national claim, over which the nation has and holds the right of disposal. This general national character of the claim demands that changes in its specific nationality become irrelevant with regard to the other state and thus are not subject to the examination of the Commission. So it is the espousal, the close connection of the claim which originated in the person of the individual and the national interest as a whole¹⁵ which is decisive in determining the time at which the individual claim must have had a national character.

The American Commissioner urged that the date of the Treaty of Berlin was the time of espousal, because at that time there was legally designated to the German Reich the group of claims for which the American Government would demand compensation on behalf of its nationals.

It should be noted that this treaty is exceptional in that it does not deal in a purely declaratory way with claims derived from international law but constitutively motivates claims which exceed the bounds of international law. But the argumentation of the American Com-

¹⁴See the remarks in Chapter II. Cf. also Borchard, *Diplomatic Protection*, Sec. 139, p. 356; Sec. 141, p. 360.

¹⁵The vote of the American Commissioner makes it very clear: "the use of the word 'espousal' indicates, the espousal of a claim by the Government establishes something what the same legal relationship as marriage in the days when the property of the wife became the property of the husband and the wife took the name of the husband."

missioner does not place any special emphasis upon this peculiar nature of the treaty, which the American agent too stressed and which we shall discuss below. He contends that with the conclusion of a treaty specifying the various classes of claims, all private relations to the claims "disappeared from an international point of view."

But the conclusion that November 11, 1921, as the day of the exchange of ratifications must thus be considered decisive, is modified by him whenever an earlier date of espousal is suggested on the basis of special circumstances. We refer to cases in which the American Government raised claims against Germany during the period of American neutrality.¹⁶

The German side replied that the purely internal process whereby a government decides to espouse the claim of a national can not have an international effect, and that in international intercourse only a governmental declaration of intention made to the other state can have such an international effect; that hence the conclusion of the Treaty of Berlin was not a "presentation" of the claims now pending before the Commission.

The German side also argued that the act of presentation, though not unimportant in international law, does not furnish the decisive date; that this date must be seen in the date of the Commission's decision.

This argument was primarily motivated by the fact that it follows naturally, and quite apart from any international principle, from the tacit agreement of the two governments on the continuity of national ownership admitted by the American Commissioner and used in another connection in his own decision.

For if such an agreement was in itself derived from the uniform practice of the two governments, accepted by the American Commissioner, and not denied by the German Commissioner, it was logical to treat this practice uniformly in its entirety, unless in one point or another an express deviation could be determined.

Now since the German side had not claimed any deviations from the American practice in this respect, the American mode of dealing with the question of the nationality of the claim had to be considered, though tacitly, as generally desired and approved.

¹⁶ The American Commissioner maintained this position even beyond Decision V and reaffirmed it with special motivation in the case of Maud Thompson de Gennes, Docket No. 2262, p. 213. But the decision of the Umpire, in agreement with the German view, rejected it.

The American practice, described in the General Instructions as "the practice of the Department of State as set forth in these instructions," laid down the express rule that a claim must have been the property of a claimant to the date of its settlement.¹⁷ Hence in regulating the question of continuity of national ownership it not only laid down this rule as such, but as an integral part thereof it specified also the time during which it must continue, so that the accepted tacit agreement had to extend to this same time.

Now since the provision of the American General Instructions quoted in note 17 [*supra*] expressly specifies the day of the settlement of the claim, this day was described by the German side as following from the tacit agreement of the governments and hence as being the decisive day.

On the authority of various decisions of international courts, and of a decision of the United States Supreme Court,¹⁸ the day of settlement was assumed to be the day of the decision, since on that day the duty of the Commission in connection with the claim is ended.

But it seemed necessary to deal with these questions, over and above the arguments taken from the agreement, from the point of view of international law.

¹⁷ Clause 6 of the General Instructions reads: "Moreover, the Government of the United States, as a rule, declines to support claims that have not belonged to the claimants of one of these classes (these are the two classes, to be discussed below, for which the United States promised diplomatic protection) from the date the claim arose to the date of its settlement. Consequently, claims of foreigners who, *after* the claims accrued, became Americans or became entitled to American protection, or claims of Americans or persons entitled to American protection who, *after* the claims accrued, assumed foreign nationality or protection and lost their American nationality or right to American protection, or claims which Americans or persons entitled to American protection have received from aliens by assignment, purchase, succession, or otherwise, or *vice versa*, can not be espoused by the United States."

¹⁸ Cf. the German vote in Decision V, p. 165 [173?]. A different settlement would mean that in cases before the Commission in which aliens, indeed even Germans, became the heirs of American citizens, the German Government would have to give compensation to these aliens, indeed even to its own nationals.

On the other hand it must be remembered that a systematic application of these legal consequences to cases in which German debtors are sued in matters of private law would signify that alien heirs also would lose their standing before the Commission in the case of such a private law claim.

In this connection the contention of the American Commissioner is important, *viz.*, that a distinction may be necessary between cases in which the rightful claimant voluntarily renounces his nationality or his right, and cases in which these consequences have legally ensued without his will.

Accordingly the German vote treated the general points of view at the bottom of the problem.

This vote opposed first of all the view that the purely domestic law whereby the United States adjusts its relations to those nationals whose rights it is ready to espouse, can be decisive in any way for the purely international relation of these claims thus espoused to the other state. It was emphasized that thereby the plaintiff state would, by virtue of its domestic legislation, wield an important influence upon the duration of the national ownership. Furthermore it was pointed out that the theory of the merging power of the state espousal (the merger of the individual claim in the state claim), which was conceivable in the case of ordinary injury of individuals arising solely from the violation of international principles, could hardly be applied to categories of claims as presented to the Commission first in the form of claims of private law creditors, and second in the form of claims wherein the injury of private rights by the application of extraordinary war measures is alleged. The complete disappearance of these individual rights in the claim presented by the state is difficult to understand in these cases, it was urged, especially for the American conception of law which is so opposed to every socialistic trend. It is also irreconcilable with the fact that in cases brought before the Commission not only the German private debtor, but to a certain extent the German trustee has retained the power of a direct settlement of the claims with the individual American interests.

In view of the entirely new development of international legal remedies as effected by the treaties of Berlin and Versailles, the theory of a merger is of doubtful value even as regards domestic relations.

The German argument also raised the question whether the internal decision of a government to grant diplomatic protection to a claim could have any external effect. It was emphasized that the nature of intercourse among nations, and the dignity and importance of a discussion between nations require that a measure of one nation can have international significance for the other only if such measure is duly brought to the notice of the other in accordance with the requirements of international law. But in the case of claims derived from the injury of individuals this is done not by espousal but by the presentation of the claims, as the General Instructions of the Department of State (clause 5) declare: "The Government of the United States can interpose effectively through diplomatic channels."

Such presentation—and that too is in keeping with the dignity of

international intercourse—presupposes that all the circumstances are clearly communicated so that the other government may act upon the claim in accordance with law and fact.

But this form of presentation, according to the German view, can be seen only in the filing of the claim before the Commission, since the American Government had rightly left the examination and preparation of the 13,000 odd claims to the American agent,¹⁹ so that the German Government did not become acquainted with the claim in regard to fact, law and amount until the time when it was filed before the Commission. In this connection the exceptional cases for which the American Commissioner wished to reserve a special date because the claims in question had been pressed earlier, may be passed over.

Accordingly the German Commissioner maintained that the espousal of a claim can have international significance only in case such espousal is seen in the presentation to the other state and that only the formal filing of the case before the Commission can be styled such a presentation.²⁰

Special objection was raised against considering the conclusion of a treaty such as the Treaty of Berlin as an espousal of claims now filed before the Commission by the American Government, and against recognizing this espousal only in so far as no earlier period seemed more favorable for the American claims.

In this connection it must be repeated that the Treaty of Berlin to a quite unusual extent created the legal basis whereupon the American claims rest. Through this treaty—and through the many provisions of the Treaty of Versailles incorporated by it—certain general categories of rights (reparation claims proper, neutrality claims in the sense of Decision I, and exceptional war measure claims) were created, with-

¹⁹ Professor Borchard, in his summary of the decisions of the Commission, even took the position that—deviating from the importance of a claim presented to another government through diplomatic channels—the filing of a claim is not necessarily an espousal thereof by the plaintiff state because in the establishment of a claims commission it had always been the custom to present also doubtful claims with which the government did not identify itself, *American Journal of International Law*, 1926, p. 73. This position is not without justification in the light of the procedure of the German American Claims Commission. But it is another question whether the existing practice of presenting doubtful and clearly unjustified claims had not better be abandoned or restricted, especially since it is one government which is acting against another.

²⁰ Cf. also clause 5 of the General Instructions: "Unless . . . the claimant can bring himself within one of these classes of claimants, the Government can not undertake to present his claim to a foreign Government."

out even the mention or formulation of a single individual claim. And these categories of rights—so far as the rights derived from the Treaty of Versailles are concerned—are only created conditionally, so that it depended upon a further decision of the American Government, which had to be announced to the German Government, whether and to what extent it would avail itself of these rights. The Treaty of Berlin (Art. II) states expressly: "The United States in availing itself of the rights and advantages stipulated in the provisions of that Treaty." Accordingly it leaves open the actual application of the rights granted by the treaty, and in fact the United States actually did not avail itself of all its treaty rights, leaving pension claims, for instance, unrepresented. The conclusion of the treaty, so far as American claims are concerned, is merely a "preparatory act" in this connection, and can never be regarded as an espousal in the sense of a presentation of the claims.

The summary formulation of the American claims, as contained in the Knox-Porter Resolution embodied in the Treaty of Berlin, conforms, so far as our present question is concerned, to the usual version found in treaties which list claims. But precisely such treaties have prompted international tribunals to apply the principle of the continuity of ownership until the day of settlement.

A contradiction was also found in the fact that here the text of the Berlin treaty and the Knox-Porter Resolution were to be given a constitutive force for this question, while at the same time the position of the American agent that by virtue of the identical text the requirement of original national ownership was removed, met with unanimous rejection on the part of the Commission.

The American agent had pointed to Article 5 of the Knox-Porter Resolution, wherein the liability of German property for all American claims is stated, and at the same time the categories of these claims are designated in what the German side calls an enumerative and the American side a constitutive form, and limited in such a way that claims for losses shall accrue to all those who "owe permanent allegiance" to the United States. The American side deduced from this that it was necessary and also sufficient for the claimant to have had American nationality at the time of the approval of the resolution by the President of the United States—a deduction which was of great importance for the extent of the German obligation in view of the subsequent naturalization of many persons who had not been American citizens.

This interpretation was contested by the German side because the use of the present tense of the verb "owe" was apparently prompted by stylistic and not by legislative reasons, the purpose of the clause being to make the word "national" include all those enjoying American protection. But a settlement of the question here raised was not offered by this provision, according to the German view.

Hence the vote of the German Commissioner stated that in agreement with the practice of the Department of State, and with the decisions of international tribunals and of the Supreme Court of the United States, the nationality of the claim must not only have been clear at the time of the origin of the claim, but that the continuity of such nationality must be maintained until the day of the decision, so that all facts of legal consequence for the decision of this question of nationality brought to the knowledge of the Commission up to that time are to be considered in rendering the decision.

The decision of the Umpire concurred with the view of the American Commissioner, but for reasons which differed radically.

Leaving the question of time and effect of an espousal, i.e., the governmental espousal of a claim, in its legal, external effect undecided, he bases his decision exclusively upon the content and text of the Treaty of Berlin.

In an interesting and noteworthy manner he discusses first the theory of continuous national ownership of a claim and its internal justification. In this he sees not so much a legal principle as a frequent but not binding practice, the importance of which he finds in the formal validity of the claim rather than in its material justification.

The decision proper is then based upon the fact—recognized by both Commissioners—that the international custom is subject to modification by treaty, and then states that such modification was effected in this case by the text of the Knox-Porter Resolution embodied in the Treaty of Berlin.

The rights mentioned in this resolution become a binding obligation for Germany with the coming into force of the treaty. Thereby they become, so far as Germany is concerned, indelibly impressed with American nationality.

Obviously it is the constitutive significance of the Treaty of Berlin from which this effect is derived. For it is especially emphasized that all German obligations "are merged in and fixed by the Treaty."

Thereby the duty of the Commission is limited to the question whether a given claim comes under the provisions of the treaty.

Now since Germany had bound herself to make good all injuries which American nationals had suffered, and since this obligation became absolute when the treaty went into force, the only point of time which could come into question beside the time of the origin of the injury was that of the coming into force of the treaty.²¹ This was the line of reasoning employed by the Umpire.

In this way the position stated by the Umpire, in his introductory remarks, that continuous national ownership is not a part of material law but a question of formal admissibility (seen from the right of the plaintiff) or of formal competency (seen from the authority of the Commission), is deserted since the question of the material justification of the claim is directed at the time of the coming into force of the treaty.

The decision is also surprising in that it does not exclude the principle of continuous ownership, the justification of which is first questioned in a nice argument, but applies it and in reality considers the mutual desire to conclude a treaty as being decisive only for the period during which the ownership is to be effective.

There is no detailed discussion as to what extent the text of the Treaty of Berlin under this construction reveals an intention to modify existing legal practices—an intention which is recognizable and which is recognized by Germany.

A further discussion would have been all the more welcome here inasmuch as the decision does not show wherein the special deviations in the formulation of the treaty are to be found which distinguish this case from those treated by other commissions, and decided in the spirit of the German interpretation.

In deference to the wish of both Commissioners, a few special classes of claims were reserved in this decision for special treatment. Brief mention thereof seems desirable in view of their legal interest.

In the first place we mention the treatment of claims lodged by the inhabitants of the formerly Danish islands of St. Thomas, the Virgin Islands, which in January 1917, had by purchase passed into the possession of the United States.

The American agent had taken the view that even in so far as these claims had arisen prior to January 1917, they came under the Treaty of Berlin, since at the time of the approval of the Knox-Porter Resolution by the President (July 2, 1921) the injured parties owed permanent

²¹ Thereby all changes of nationality undergone *subsequently* by the claim are irrelevant. Thus for instance the heirs of an American who died in the spring of 1923 receive the compensation accruing to the testator, though they are all Russians.

allegiance to the United States. This view was unanimously rejected in the Commission since acts of Germany against the nationals of a state not enjoying the special rights of the treaties of Berlin and Versailles can only be judged in accordance with international law. It was doubtful whether the United States would have been competent to press claims which had arisen under international aspects. Since acts directed against a Danish national could injure only the Danish and not the American nation, the requirement of original national ownership did not exist *per se* if the United States presented this claim. On the other hand, Denmark was probably no longer entitled to press such a claim under the principle of the continuity of national ownership. Hence the question arose whether under these circumstances the United States, as the universal successor of Denmark for the islands in question, was competent. The question was not formally decided.

A further question held open concerned the rights of non-American seamen engaged on American vessels for whom there existed nationally fixed rules for temporary international protection. Later it was decided in Germany's favor in the case of Edward A. Hilson (Docket No. 26, p. 231). The decision is based upon the text of the Treaty of Berlin and is hardly of general interest.

Of special importance however was the further question how claims were to be treated which after their origin but before the stipulated time passed partially into the possession of non-American nationals. In so far as a part of the original claim had remained in American hands, e.g., in claims for damaged property, where perhaps a co-proprietor had foreign heirs, there was no difference of opinion concerning the remaining American portion.

But the American side expanded the concept of the remaining American interest to include far different cases. The points of view here advocated are explained primarily by the American contention that every loss of an American is as such subject to compensation (cf. Chapter VIII).

According to this theory every beneficiary interest of an American entitled to protection would be sufficient to make his loss subject to compensation.

The mortgagee was to be entitled to compensation in case the damaged or destroyed property, originally American, had devolved upon an alien. The purely obligatory creditors of an American were likewise to be so entitled if and in so far as through the devolution of the claims of their American debtor upon an alien their obligatory claims

against the debtor remained uncovered. Indeed, even for state inheritance taxes remaining uncovered for such reasons, the possibility of the subsistence of the original claim was to be reserved.

These consequences show how the principle of nationality of a claim is weakened almost to insignificance, if it is one-sidedly opposed by the axiom formulated by the American side, whereby decisive importance is attached to the requirement that the loss, i.e., the injury following the act, must have affected an American.

The conflict of the two theories was most sharply expressed in Decision VII, whose far-reaching findings were based upon the claims of the American charterer of the steamer *Vinland*. The *Vinland* was the property of a Norwegian shipper and was rightfully sunk according to the express conclusion of the Umpire. Yet, under certain modalities deviating from the construction of the claim, it was decided that the American was entitled to compensation in accordance with the Treaty of Berlin.

But the question of the possible justification of such a claim, whether under the Treaty of Berlin or in accordance with international law, is so closely connected with the question of causal relation between cause and consequence of the injury that we must refer the reader to the remarks in Chapter VIII below.

The case of Mary Barchard Williams, Docket No. 594, page 219 [221] of the Decisions, concerns the interpretation of American law. The decision is not without general interest.

The claimant, a born American, had become a British subject by virtue of her marriage with the British national, Edmond E. Barchard, who lost his life on the *Lusitania*. The claimant, who had meanwhile remarried (an American), had her legal domicile in the United States at the time of the sinking of the *Lusitania*.

She made a claim for the injury suffered through the loss of her first husband, basing it upon a provision of the laws of the United States of March 2, 1907, whereby an American woman, in ceasing to be the wife of an alien, has the right to resume her American nationality; this may be done, if she lives abroad, by registering within a year at the American consulate, or if she resides in the United States, by continuing to reside therein.

According to the German interpretation, this right enjoyed by the claimant had no effect upon the circumstance that at the moment of her husband's death she too was a British subject, and hence not a national in the sense of the Treaty of Berlin.

But the decision of the Umpire rejected this argument because the claimant, domiciled in the United States, had become an American again *eo instanti* through the death of her husband. Accordingly her claim, the legal construction of which is treated more in detail under the Lusitania claims,²² was regarded as being of American origin and entitled to espousal.

²² See Chapter V below.

CHAPTER V

EXTENT OF THE OBLIGATION TO RENDER COMPENSATION IN CASE OF DEATH AND INJURY (LUSITANIA CASES)¹

The extraordinary importance of the Lusitania case in American public opinion made it natural that the claims growing out of it were among the first to be presented to the Commission.

This is not the place to discuss the reasons why the Lusitania claims were and still are uppermost in the American mind. It will suffice to remind the reader that it was primarily these claims which prompted the United States to insist upon the inclusion of paragraph 4 of Annex 1 to Article 298 of the Treaty of Versailles. The provision which speaks very generally of claims based upon "acts committed . . . since July 31, 1914, and before that Allied or Associated Power entered into the war" has often been referred to briefly as the "Lusitania clause." And even now while these lines are being written (late in 1924) we find in writings dealing with the American war claims and with the German obligations, a discussion of the American "Lusitania claims and other claims" of the United States against Germany, although the Lusitania claims, ultimately netting less than 2½ millions of dollars and originally estimated at 50 millions, represent an insignificant item in comparison with the total liability of over 170 millions imposed upon Germany.

This American point of view can not be disregarded in judging the principles guiding the Commission in such claims, and especially in their application to individual cases. This explains too the demand of the American agent for additional punitive damages, rejected with detailed motivation by the Commission in the opinion in the Lusitania cases. It explains also the elastic principles for determining damages and their application to the individual case. Hence what was decisive, or at least important for the Lusitania cases in view of the circumstances, should therefore, in so far as the amount of the awards is concerned, not be generalized.

¹ The decisions touched upon in this chapter are the Opinion in the Lusitania Cases, pp. 17 *et seq.*, and Decision VI (dealing with claims of American nationals for damages growing out of the deaths of aliens), p. 195.

But the leading points of view used in the decisions were utilized in all similar cases, and may therefore claim a general interest.

Since in principle the German liability was determined both in accordance with the German note of February 4, 1916, also mentioned in the decision, and in accordance with Administrative Decision I of the Umpire,² the Commission had merely to settle the principles governing the amount of the claim and its determination.

For the solution of this question, two general questions had to be answered: According to what principles of law and method of computation was the claim to be judged? The former question touched the claims arising from cases of death and personal injury, the latter only the claims arising from death.

Apart from the fact that in international acts on the high seas the law of an individual state could not be decisive for the extent of international liability, and apart from the fact that the United States, for example, prior to 1920, had no legal provisions concerning liability for deaths on the high seas, the Commission, in answering the first question, believed that the law of an individual country could not decide the problem of international liability, but that an attempt must be made, by consulting and considering the laws of all civilized nations and general points of view, to determine the expedient norms.³

In answering the second question, the Commission decided that not the appraisal of an individual life—perhaps by lump sums—but the damage incurred by the individual claimant making the claim was to be used as a basis. The chosen method of computation was to be applied exclusively, contrary to the wish of the American Commissioner, who quite generally desired to have a minimal sum determined for each death in cases where no damage had arisen for third parties.

In some respects this method was similar to the British. But it differed in the essential point that it was used by the British merely to determine an average damage for every life on the basis of a number of cases, and that this average was then automatically claimed as compensation⁴ in every case.

² In Decision I it was stated that Germany was liable for all acts, not only those contrary to international law, committed during the period of American neutrality, in so far as an American had suffered injury thereby. Cf. the chapter on neutrality claims.

³ Cf. the Administration Decision No. II *sub* "Principles governing Commission," p. 7.

⁴ The circumstance that the amount of average differed for civilians killed on land and for decedent passengers is irrelevant in this connection.

In some points of view used for the computation of the damage but not in their principle of application, the British method was similar to the norms applied by the Commission, whereby only the effective damage of the individual case was to be made good.

Both methods have been applied by international tribunals. The powers participating in computing the reparations at Paris have, as far as is known, all used a general appraisal of life as the basis for estimating their damages and have thus used in effect the method applied in England.

The material consequence of the method used by the Commission was that every case was to be judged and decided in accordance with its special circumstances. The formal consequence was that not the heirs as such, nor the estate (pursuant to American law, which deviates considerably from the German point of view), but only the actually injured heirs have the right to raise a claim.

In the course of the proceedings, it appeared that this formal consequence was given a different interpretation by the German side from that given it by the Americans.

The Germans regarded the chosen method only as a manner of *calculating* the damage, and held that this was expressed in the decision which spoke of "the measure of damages to be applied" and of the remedy "measured by pecuniary standards."⁵

The Americans considered it as the recognition of an independent right of the third injured party. Hence it was the loss suffered by the third party, not the loss of life which was treated as a claim.

The practical difference between these constructions is that under the American interpretation, the American relations of a non-American would also be entitled to compensation, because the loss entitling to compensation originated directly in the person of the American relation injured in his *rights*, while under the German interpretation the death itself was the sole and decisive cause of injury, so that the loss of the life of a non-American did not represent a loss vested with American nationality (which is the prerequisite for every claim coming before the Commission).

This question, touching the basic principles of the requirement of nationality, was discussed in detail in the votes of the two Commissioners on Decision VI. We merely refer thereto.

The Umpire maintains that, according to the provisions of the

⁵ Cf. also Life Insurance Decision, p. 116.

treaties of Berlin and Versailles, the damage suffered by an American and traceable directly to a German act must be repaired.

In this, the act committed against the person of the decedent is not considered the original cause of the damage; this is seen in the damage suffered by the person of the third party, namely, the relative. The original damage is not the death of X, but the damage to the property of Y, and upon this act the principle of the nationality of the claim is to be applied.

We shall revert to this construction in connection with Germany's liability for property damage (cf. Chapter VIII).⁶

The principles for the compensation itself, as formulated in the opinion in the *Lusitania* cases, partially exceed the German provisions for compensation in case of death. In fact, the German provisions are exceeded by those of most nations.

Especially the idea of compensation for mental suffering, as also that of compensation for moral and spiritual prejudice as a result of losing the care of a husband or of parents, with its estimation of mental suffering in dollars and cents, is foreign to German concepts of law. Anglo-American law is based upon a different theory in this respect.

In another point, the subsequent application of the principle that there existed a difference between the German and the American conceptions led to an unexpected though financially insignificant extension of Germany's liability. It appeared that the American conception of dependency, as applied in clauses 2 and 3 of Annex 1 *sub* Article 244 of the Treaty of Versailles, went beyond the German conception. For among the rights to contributions⁷ derived from such dependency there were also included such contributions as had been made voluntarily by the decedent, e.g., pin money allowed by a wealthy father; gifts of a son to his mother, etc.

In connection with the far-reaching American conception, the Umpire treated also such relations of contribution as coming under the definition of dependency, or of contributions resulting therefrom, and took them into account in his decisions.

⁶ The special provisions of the Treaty of Versailles, especially clauses 2 and 3 of Annex 1 *sub* Art. 244, were also invoked in answering the question whether the claim for an injury abates when the injured party dies prior to the decision. The question is treated differently in the different states of the Union. It was answered affirmatively by the Anglo-German arbitral court. The Umpire answered it negatively, especially with reference to the aforementioned provisions of the Treaty of Versailles.

⁷ "The amounts . . . which the decedent, had he not been killed, would probably have contributed to the claimant."

For the rest, the application of the rules may be regarded as more important than the rules themselves. A brief discussion of this application in the Commission may serve as the best commentary thereon.

In the first place, the rules were never applied mechanically or cumulatively alone; they were treated merely as more or less binding principles in judging the individual case justly and objectively.

In so judging, the Commission used not merely the circumstances as they existed at the time of the act but considered also later circumstances which had been brought to the attention of the Commission. Thus in case a widow, dependent upon her husband, had deceased prior to the decision, not the entire alimony claim computable on the basis of the rules at the time of the husband's death, but only that part of the claim extending up to the time of the widow's death was considered in the decision. Likewise the remarriage of a widow, although contrary to the position of the German agent this act was not considered as absolutely excluding further claims, was taken into account to such an extent that, e.g., in case the second husband was so wealthy that the future of his wife seemed assured, the claims extending beyond the time of the remarriage were dismissed.

On the other hand, in harmony with this procedure, aged and needy people who had depended upon the support of the deceased, whose normal period of life had already expired in accordance with the Life Expectancy Tables which were used, were granted a competency over and above the normal period of life if it could be proved that they were still living at the time of the decision. This further support was computed on the basis of the probable duration of life of the claimants at the time of the decision.

In this connection, the question arose whether by analogy the date of the decision should not be used generally in computing the probable duration of life of surviving claimants. This question was decided by implication to the effect that the Commission, apart from the fore-mentioned exceptional cases, computed the probable duration of life of surviving claimants from the day of the death of the relative in question.

In appraising the pecuniary amount of the injury caused by the death, not the full probable duration of life of the decedent was used, but the probable duration of his earning capacity, as suggested by the probable duration of his life, was so estimated that an average point between sixty and sixty-five years, depending upon his vocation, was determined as a limit.

Furthermore, a considerable portion of the husband's income, the

amount depending upon the individual circumstances (30–50%) was deducted as being for the husband's own use. Also all increases in salary, though probable, were disregarded, above all on account of the speculative element connected with the question of the possibility or probability of such increases.

On the other hand, in opposition to the German view, the income accruing, e.g., from the occupation of the deceased father was taken into account even if the future of the family was assured by a large estate. In such cases, the Umpire distinguished between income accruing from work and income accruing from capital, and awarded a compensation for the loss of the fruits of the labor.⁸

To this extent, the generally observed principle that compensation for chances of inheritance which would have existed had the decedent continued to live and increased his fortune should be rejected, was not observed.

If surviving children were involved, it was assumed that they could have received support up to the time of their majority, or at most until their twenty-fifth year. But in keeping with the American theory of dependency and contribution already discussed, the claim was not limited to what was necessary for life, and to cases in which according to German law there was an admissible claim for maintenance.

But compensation for the loss of voluntary contributions was denied in case the claimants had inherited so much as a result of the death that the income from the inheritance was equal to the contributions. In this connection the insurance sums accruing to the claimants through the death were also taken into account.⁹

In agreement with the rules of the Commission, compensation for mental suffering, loss of care, education and supervision was considered in addition to the above points of view which belong more to the sphere of compensation for material losses.

⁸ The claim of the heirs of Vanderbilt (Docket No. 2187) was rejected because "the producing power, if any, of the decedent is not disclosed by the record."

⁹ In Decision No. 591 (claim of widow Stone) on the claims of the widow, two sons and a daughter arising from the death of the husband and father, it is stated:

"To the extent that contributions by the decedent made during his life and those which he would probably have made to claimants but for Germany's act causing his death were the fruits of the personal efforts of the decedent, the claimants have suffered pecuniary damages which Germany is obligated to pay. But to the extent that such actual or probable contributions were derived as income from the estate of the decedent, which vested in the claimants on his death and yielded to the claimants the same income as it yielded to decedent during his life, the claimants have suffered no pecuniary damages."

Compensation for mental suffering was restricted to direct ascendants and descendants of the decedent, but in cases where a considerable number of children made individual claims, awards were inevitable which ran counter to German concepts of law. Such claims on the part of grandparents were denied.

The question whether compensation for this mental suffering was to be computed uniformly, without regard to the wealth of the claimant, in cases of similar relationship and under similar circumstances, or whether the mental suffering was to be estimated variously depending upon the wealth of the parties concerned, led to detailed discussions in the Commission. The Umpire decided that the mental suffering *per se*, independent of the wealth of the party concerned and particularly in the case of impecunious circumstances, must be appraised very liberally, but that the differences in circumstances gave the parties concerned a psychologically different conception of the value of the dollar, so that the amount of compensation depends upon the pecuniary circumstances of the claimant.

In one special case, in which the widow and children enjoyed unusually favorable circumstances, no compensation for mental suffering was awarded because in the given instance any reasonably possible compensation would have seemed inconsiderable and would not have fulfilled its ethical purpose of compensation. But this entire phase of compensation, including compensation for loss of care, education and supervision, was stressed only when material factors for computing injuries were non-existent or insufficient. If there were means of computing material injury, the amount thus attained was increased. But generally compensation based upon mental suffering became an important factor only in the absence of other factors or under special circumstances.

Finally the question raised by the American Commissioner whether the considerable depreciation of the dollar since 1915 should not be taken into account, was answered negatively.

In fact it was not overlooked that the Commission had to rely upon the one-sided, though sworn statements of the claimants and their witnesses, and that it was impossible under the circumstances to get an unprejudiced and clear solution of each individual case.

This applied especially to claims deriving from injuries, in which fantastic neurosis sometimes played an undeniable part. In such cases it was difficult to solve the problem even by inviting the testimony of other physicians, since it is not easy even for a physician to

determine the facts in cases involving nervous, rheumatic and similar effects.

It was inevitable that these factors, as well as the aforementioned American attitude toward the Lusitania case, were to Germany's disadvantage in estimating Germany's obligation, so that the compensation granted for the Lusitania cases considerably exceeded the sums used as a basis for the reparation computations in Europe.

Nevertheless, in examining the first fifty-three Lusitania claims, a non-binding agreement was reached in the Commission for most cases (with the exception of several unusually high compensations), but this agreement could not be carried out because the American Commissioner finally demanded a considerable increase of these sums. The decisions ultimately rendered by the Umpire rested, on the average, upon the basis established in the joint deliberations.

CHAPTER VI

CLAIMS OF LIFE INSURANCE COMPANIES

The question touched in Chapter V concerning the extent of liability in the case of death and injury of non-Americans, in which person a claim is to be considered as having arisen, was again discussed in a different legal connection in the decision on the claims of American life insurance companies.

In the course of the World War these companies naturally had to pay out life insurance sums in numerous cases in which death had been caused by the war.

They felt that they had good claims against the German Reich for these "prematurely" paid sums.

In order to press them, the cases which seemed clearest according to American conceptions (where American nationals whose lives were insured with the companies, had perished on the *Lusitania*) were taken up first.

But the fundamental motivation of the claims, in order to be successful, had to lead to a more general liability with respect to the companies, and accordingly the latter had in due time filed all their claims as a whole.

The uniform basis was the plea that a life insurance policy is "property" and consequently entitled to protection in accordance with the treaties of Versailles and Berlin. "A contract of life insurance is property and has a value from every standpoint," the American memorial contends (p. 116).

Now since the specially pressed *Lusitania* claims are neutrality claims in the sense of Decision I and since, in order to qualify such claims legally, reference must be had to the provisions of Annex 1 *sub* Article 244 in the restriction made by Decision I, applicable in the first place to reparation claims proper,¹ the *sedes materiae* of the claim is clause 9 of the said annex.

¹ See also p. 130, Life Insurance Decision: "This provision of the Treaty [the reference is to par. 4 of the Annex *sub* Art. 298] does not define the 'claims' referred to, which are obviously in the nature of reparation claims. But other provisions of this same Treaty do enumerate the categories of reparation claims arising during belligerency which Germany undertakes to pay as a condition of peace, and these may be

The official text of this clause reads as follows: "Damage in respect of all property wherever situated belonging to any of the Allied or Associated States or their nationals, . . . which has been carried off, seized, injured or destroyed by the acts of Germany or her allies on land, on sea or from the air, or damage directly in consequence of hostilities or of any operations of war."

Since in the case of this provision, taken from the Treaty of Versailles, only the English and French texts, and not the German text, are authentic, the American argumentation proceeded from the American conception of property.

In accordance therewith the life insurance contract is *property*, for the right to the premium is actionable, and hence it is entitled to protection.

The value of this property is twofold: (1) the present worth in dollars (which are property) of the future premiums which would have been received under the contract had it matured in due course (p. 116 of the writ), and (2) the good-will of the company, realizable by sale and established by the contracted insurance.

The loss which this property suffers arises from the effects of the premature death of the insured.

A death is described as "premature" when the insured dies before the time of his probable duration of life existing at the consummation of the insurance, and determined in accordance with scientific principles.

The "injury" caused by such premature death is found to lie in the loss of future premiums payable by the insured, and in the present value of the loss of interest suffered by the company as a result of the fact that it must pay the policy not from premiums due in future, but from its other assets, thus losing the usufruct of these other funds.

If, therefore, all the prerequisites are here established whereby Germany, according to the provisions of the treaties of Berlin and Versailles, is liable for the injuries caused by the loss of a human life, then such is the argument—this liability also includes the above formulated injury suffered by the insurance companies.

But the effect of such a death upon the financial situation of the company signifies all the more a financial loss if (this is the special argument used in the *Lusitania* cases) the cause for the injury lies outside the pale of risks considered by the company. Since this is the case in so extraordinary an event as the sinking of the *Lusitania* was, the

looked to in determining the nature of the reparation 'claims' here dealt with arising during neutrality, which Germany likewise undertakes to pay."

company's obligations arising from this event could not be covered by reserves not intended for this risk.

Hence the sinking itself is described as a "deviation from the average," "for which no provision had been made," and as "interference with the operation of the law of averages."

Against this latter part of the argument derived from the special *unforeseeable* nature of the cause of death, the German defense, which dealt with all the problems in great detail, opposed the twofold argument that it can not be a question of the *foreseeability* of the individual risk, and that the plea of *prematureness* of the individual death as such is not sufficient as a basis for construing a claim.

On the first point it was stated that the normal life insurance risk assumed by the companies was not based upon the addition of various risks expressly contemplated by the companies, but includes every risk not expressly excluded, so that for the *Lusitania* cases the fact that the war risk was not excluded for non-combatants in the policies involves the covery of this obligation from the legal reserves at the time the obligation arises.

Hence, it was argued, if it is possible to speak of a reparable "loss" at all, such a loss may be regarded as having occurred only in case the entire covery provided for the entire insurance group concerned were insufficient, i.e., in case the figures for total mortality underlying the computation of the reserve were exceeded.

In the first place, the Commission studied this portion of the arguments and agreed unanimously that on the one hand the American position that the cause of death—the sinking of the *Lusitania*—had not been taken "in contemplation" by the companies and that therefore the payment of the insurance signified a loss to the companies, and on the other hand the German position that since the cause of death, though not in its actual details, yet in its legal qualification comes under the assumed risk, there was no loss involved, were both inadequate. The Commission considered that the death of the insured caused by the sinking of the *Lusitania* was premature since it was caused by special external factors and that hence the payments caused by the catastrophe represented a premature burdening of the companies and hence a loss for them, and that on the other hand the question whether the companies provided for this loss in their reserves was only an internal one, relevant for the financial status of the company—*lucrum cessans* when contemplated and covered by reserves, and *damnum emergens* when without cover.

This rejection of the American construction derived from the *unforeseeability* of the injury could be construed as a failure by this group of claimants for the special motivation of the *Lusitania* claims. But if the legal motivation of the claims had been accepted in other respects, it cleared the road for the claims of the insurance companies as a whole.

For if the requirement of unforeseeability were dropped, the American theory derived from the conception of *property* might bring it about that all such cases too would be considered subject to indemnity in which the risk was doubtless foreseen, i.e., all cases in which combatants insured against war risk were killed on the battlefield but in which such killing was premature.

In so far as the other legal prerequisites of the claim are to be regarded as fulfilled, the sphere of possible claims was thus broadened to such cases in which American companies had insured soldiers, not only American but also British, French, and even German soldiers, who had been killed. These cases were numerous because several American companies had carried on an extensive business in Europe, especially in Germany. In fact almost two thousand claims of this type were filed before the Commission.

If we consider that on the basis of international principles Decision II (p. 8) and similarly Decision V dealing in detail with the question of nationality provide that it is one of the prerequisites of indemnity for a loss that it must have affected an American, such possibilities seem at first surprising. But they are logical, for the situation in this case would be that the loss affected the property of the American company as such directly and originally, and is independent of the person and nationality of the decedent.

The far-reaching significance of this point of view, derived from a quite general argument, for the legal relations of the nations is apparent.

The possibility of friction is extraordinarily increased, while the possibility of amicable settlement is extraordinarily diminished. For how can a state undertake to settle a dispute with another state amicably or by arbitration when the compensation claims possibly arising from the effects of the act upon other nations elude computation and survey? ²

The question to be decided here, viz., whether a life insurance company can derive for itself an original legal claim from the international liability of a state for a death, acquires a significance transcending the

² Cf. the *Antioquia* case cited in note 14 of Chapter VIII.

limits of the treaties of Berlin and Versailles, all the more so since the contractual provisions cited for purposes of motivation represent—certainly so far as the arguments of the American agent are concerned—no essential deviations from the rules and modes of expression generally recognized in international dealings.

“Injury to persons or property” is in the international intercourse of the nations the almost universally recognized prerequisite for international intervention.³ And “acts committed against the persons or property of citizens” are accordingly the causes for such intervention.

Hence the “claims arising out” of such acts are made the subject of international arbitral settlement.⁴

Indeed we find phraseology which seems to cover the American point of view entirely.

Thus the Samoa Treaty between the United States and Great Britain of November 7, 1899, speaks of “claims . . . for compensation on account of losses which . . . they have suffered.” And likewise the new instructions of January 30, 1920, prepared by the United States Department of State as a basis for the claims of American nationals against foreign governments resulting from the recent war, speak of: “claims . . . for loss or injury (1) which was suffered . . . by its citizens, and (2) for which a foreign Government . . . was responsible.”

And both phrases appear together in Decision I of the Umpire, wherein Germany is declared responsible for “all losses, damages or injuries to them [i.e., American nationals], including losses, damages, or injuries to their property wherever situated.”

Now since the American expression “property” is legally of greater significance and in its broader sense much more far-reaching than the German “*Eigentum*,” which is used in the German version of the Berlin treaty as corresponding to “property,”⁵ it is easy to see how the American conception tends to treat as reparable every material diminution of wealth, provided the liability is in other respects apparent.

³ Thus the treaty between the United States and Mexico of July 4, 1868: “claims . . . arising from injuries to their persons or property.”

⁴ Thus the well known Treaty of Washington of May 8, 1871 [Art. XII], between the United States and Great Britain provides for the arbitral settlement of “all claims . . . arising out of acts committed against the persons or property of citizens.” Similarly the treaty between the United States and Chile of August 7, 1892.

⁵ It is doubtful whether the Germans were in every case aware of the full significance of some of the phrases used. In Art. 232, par. 2 of the Treaty of Versailles the word property is rendered as “*Gut*”; in Annex 1, clause 9, *sub* Art. 242 as “*Eigentum*,” and in the Knox-Porter Resolution again as “*Eigentum*.”

The resulting problem with its far-reaching consequences will be treated below in Chapter VIII. Here we refer only to the general connections of the question of justifiability of the life insurance claims.

In the Commission, the arguments of each of the three members were different in the matter of reaching the decision which was rendered by the Umpire because the Commissioners disagreed. His decision was in the sense of a denial of the claims. As for the details, we may refer to the minute motivations which all three members gave to their opinions.

The decision of the two American members places the interpretation of the special contractual provisions here involved in the foreground.

The American Commissioner starts out from the principles stated in the *Lusitania* case and deduces from the *direct* claim awarded to the claimants in that case that the claims of the insurance companies for their lost premiums are also justified.

The Umpire did not follow this train of thought.

His decision is primarily based upon the special contractual provisions, especially clauses 2 and 3 of Annex 1 *sub* Article 244,⁶ and its argument rests upon the fact (p.130) that on the one hand the claims arising during the period of American neutrality are to be treated analogously to the reparation claims proper, and that on the other hand for these reparation claims the special mention of the claims of surviving dependents limits the rights of third parties derived from deaths to these surviving dependents.

But the decision of the Umpire acquires a more general significance in that, in its second part, it deals with the question, discussed in detail in the preparatory memoranda of the agents, of the causal connection between the injury here pressed and the cause of the injury.

The decision denies this connection, seeing, in agreement with the position taken by the German agent, only a remote consequence of the injury in the loss of the insurance companies.⁷

⁶ Clause 2 reads as follows: "Damage caused by Germany or her allies to civilian victims of acts of cruelty, violence or maltreatment (including injuries to life or health as a consequence of imprisonment, deportation, internment or evacuation, of exposure at sea or of being forced to labour), wherever arising, and to the surviving dependents of such victims."

Clause 3 reads as follows: "Damage caused by Germany or her allies in their own territory or in occupied or invaded territory to civilian victims of all acts injurious to health or capacity to work, or to honour, as well as to the surviving dependents of such victims."

⁷ On p. 139 of the decision, the argumentation of the Umpire is supported by citing cases in American practice in which similar claims were rejected because they were remote consequences.

The decision here reverts to Decision II and connects the ideas of proximate cause or proximate consequence and remote cause or remote consequence with the point of view of normal consequence (p. 133) on the one hand, and consequence that no one could possibly foresee (p. 137) on the other, stating that the "*intent* of disturbing or destroying such contractual relations" must be a prerequisite of liability. Thereby this principle recognized in the laws of all civilized nations is represented in the light of causal connection and logically brought into the trend of the decision.⁸

The German Commissioner based his argument on the interpretation of the idea of "property," both from the point of view of international law and from that of the provisions of the treaties of Berlin and Versailles.

For the work of the Commission, it seemed necessary in the first place to clarify this idea in the sense of the treaty, since this was of decisive importance for many other cases too.⁹

But at the same time, the broader background of the question in relation to international law had to be stressed.

The right of the individual to protection, as it is regulated and vouchsafed in international relations by national legislation—apart from the varying nature of protection conditioned thereby—can not claim the same right in international intercourse.

The international protection of the individual requires that the claim of an individual national be espoused and represented by the state as a whole, that is by the nation as such.¹⁰ It further requires that it be asserted against another nation as such.

That is a procedure which in seriousness and importance goes far beyond the *modus procedendi* under which the individual in a private law litigation invokes the protection of the courts, and which must depend upon clear rules if it is not to involve the nations in their relations to each other in misunderstandings and danger. The first of these rules must be that visible, recognized values needing protection, i.e., persons or tangible property, were the subject of the alleged violation.

The honor and respect of a nation are affected by the alleged violation. But the mere willingness to assume such an affront in case purely contractual rights of a national with respect to persons or prop-

⁸ As a consequence of the decision, other similar claims arising out of contract injuries, e.g., deduced from the death of employees or partners, were rejected.

⁹ See Chapters VII and VIII.

¹⁰ See Chapter II.

erty are *injured*, is tantamount to degrading the dignity of international legal protection, and to menacing the relations of the nations to one another needlessly.

The German side consequently took the position that in international law only the real property damage and not contract claims of third parties are entitled to reparation.

As the final paragraph of his decision (p. 139) shows, the Umpire consciously left the question of the conception of property undecided.¹¹ But in the second part of his motivation, he transcended the legal situation as conditioned by the contractual foundations, thus rendering in this section of his remarks a decision of more general and permanent value.

¹¹ But in Decision VII the Umpire took a detailed stand on this question, so far as it is based upon the interpretation of the treaties of Berlin and Versailles. In the main the decision agreed with the German view.

CHAPTER VII

CLAIMS OF MARINE UNDERWRITERS (SUBROGATION)

The conditions of the World War which will perhaps never occur again, have brought a question to the fore which despite certain relevant decisions, has never really been decided, but which attained considerable importance before the Commission both materially and juridically, namely, the question how far and under what legal conditions the marine underwriter, especially the underwriter in a war on sea, is entitled to file claims for injuries covered by him.

The legal nature of such a claim required special examination, particularly because here again a point of view frequently touched and derived from a principle of nationality is involved.¹

It is a principle of international law that only an injury suffered by a national of the intervening state in his person or property results in an internationally justified claim for reparation to the state concerned.² Thus a claim pressed by the American Government in the matter of British or Swedish property, for instance, would lie beyond the pale of international rules and would not be recognized by the Commission.

An application of this legal principle to insurance claims shows the extent of the question concerning the legal nature of these claims. If the insurer has only a derivative claim for compensation (derived from the right of the party insured), or according to Anglo-American terminology if he has this claim only by virtue of subrogation, the claim, which in its origin did not affect an American national is not justified, provided the insured party himself belonged to another nation, since according to another undisputed international rule the later transfer of the claim to a national is not sufficient justification for its espousal. But if the claim arose directly in the person of the insurer, his status and his nationality are decisive—a conception, the extraordinary significance of which is clear if one considers that thereby every claim derived from a reinsurance concluded by an American as reinsurer, as it is conceivable in the very complicated international reinsurance business in

¹ Cf. Chapters V and VI.

² Cf. Decision II, p. 8: "the loss must have been suffered by an American national."

many possible forms, would be justified regardless of the nationality of the reinsurer and the original insured party himself.

Now since both the American legal norms regulating the transfer of property³ and the nature of American export trade during the war (e.g., by arranging previous payment or of confirmed bank credits) were bound to lead frequently to the transfer of property to the vendee at the time of shipment, and since in many cases the vendee did not have American nationality, they were—certainly so far as the American export trade was concerned—in many cases goods which were not American owned, for which the American insurer had paid and now demanded reparation.

An obligation for reparation in the case of these claims was bound to affect Germany very seriously since the British Government, in the reparations account presented by it, used as a basis the "inward bound trade." Hence, in so far as the commercial relations of Great Britain and America were concerned, the same traffic in goods was used for the British account for which the American insurers now demanded compensation to the extent of the insurance sums paid by them.

The legal questions resulting therefrom became more complicated through the fact that in addition to private claims derived from insurance contracts, such claims on the part of the American Government also were involved, since the American Government, taking account of the economic situation during the war, had conducted, in the Veterans' Bureau, an extension insurance business in the interest of American commerce, and since with regard to these government claims the German liability was regulated differently on the basis of the special provisions of the treaties of Berlin and Versailles than with regard to private claims.

All the resulting questions were exhaustively discussed by the agents in memoranda—on the American side also by the legal advisers of the interested groups.

The American side did not overlook the fact that the principle of subrogation, i.e., the right of the insurer to enter upon the rights of the compensated third party, is recognized in all civilized countries. But over and above this a direct, *original* right of the insurer was claimed and thereupon the claim of the insurer—independent of the nationality of the insured—was based.

The arguments motivating these statements in detail may be summed

³ According to American law "the transfer of the property is effected by the mutual assent of the parties to the contract of sale." Tiffany, *Law of Sales*, p. 50.

up under the point of view that in any case the insurer is, by virtue of the conclusion of the insurance contract, interested in the fate of the insured article and that this very "interest" represents a property value entitled to protection. This property value is all the more apparent, since at the time of effecting the insurance contract the insurer was entitled to indemnify himself in case of injury, since in other words the *spes recuperandi* forms a part of the insurance contract, an asset to which the insurer was entitled from the start.

The justification of this point of view was also based upon the principles governing the right of constructive total loss and of abandon connected therewith. Attention was called to the retroactive force with which, in such cases, the insurer enters upon the rights of the insured at the time and place of the total loss.⁴

In this relation of the insurer to the insured article a quasi-ownership, a "beneficial right" was detected,⁵ the injury of which was a direct injury of the property of the insured and hence justified the claim.

The German side contested these arguments strenuously.

It was stated that even if *per inconcessum* there were a direct property relation of the insurer to the insured article, yet this could not refer to rights of the possibility of which no one had thought at the time of the injury, and which at the time were not and did not become existent. For the fact that in consequence of the lost war Germany could be called to account at all, and what is more, to an extent which was so far-reaching and brushed aside every international restriction, could not be foreseen, especially at the time of the conclusion of the insurance contract.

But the principal argument was directed against the American idea of

⁴ Brief on behalf of American Marine Underwriters by Bigham, Englar & Jones, p. 13: "the underwriters succeed to the assured's rights retroactively as of the time and place of the actual destruction" and: "the abandonment . . . related back to the capture, and took its operation and effect from that loss." *Clarkson v. Phoenix Insurance Co.*, 9 Johns 1.

⁵ The decision of the Supreme Court in the case of *Hall v. Nashville & Chattanooga R. R.*, 80 U. S., p. 356, was cited: "In respect to the ownership of the goods and the risk incident thereto, the owner and the insurer are considered but one person, having together the beneficial right to the indemnity due from the carrier for a breach of his contract or for non-performance of his legal duty."

Since the matter was settled by compromise, the Umpire did not render a formal decision. But his decision on the claims of the life insurance companies contains an interesting sentence (p. 135): "The insurance becomes material only in determining who really suffered the loss. This is because a contract of marine or war-risk insurance is a contract of indemnity ingrafted on and inhering in the property insured."

a purely economic interest on the part of the insurer in the insured object as a property value directly entitled to protection in international intercourse, especially as a right coming under the definition of property in the sense of the treaties. At the same time, for the correct estimation of this economic interest of the insurer, it was stated that the risk was covered by the premiums and that in reality the insurers had suffered no loss, but had realized a substantial profit.

It was recalled that in distributing the lump sums paid by Great Britain in satisfaction of the so-called Alabama claims, American legislation expressly restricted the claims of American insurers to such cases in which the insurer had suffered an effective loss in his business as a whole during the time in question.

From the purely juridical point of view, it was emphasized that a claim even as a matter of theory can not be original and derivative at the same time, as was the case according to the American conception, which expressly recognized the principle of subrogation as being applicable.

With regard to the government claims, it was argued that in the case of these, certainly for the period of American neutrality, the unconditional liability of Germany for every legal and illegal act is not apparent, as witness Decision I which is restricted to private claims, and the Knox-Porter Resolution, Section 5, which mentions only the claims of American nationals.

In judging the legal questions concerned, there was a radical difference of opinion between the two national Commissioners. In the fundamental question of determining the material extent of Germany's liability, the two divergent views were treated in detail in deciding the life insurance claims in the dissenting opinions to which we refer.

Hence the dissenting opinions formulated in this question have a supplementary character. Further elaboration is unnecessary too because meanwhile it proved possible to settle the question of subrogation by compromise.

In his vote the American Commissioner placed the rights of an American national arising from events at the time of American neutrality, and from such at the time of American participation in the war, on the same plane, and in this he is in agreement with the thoughts developed by the Umpire in the Life Insurance Decision, page 130. Starting from the text of clause 9 of Annex 1 *sub* Article 244 wherein "damage in respect of all property" and "damage directly in consequence of hostilities or of any operations of war" are mentioned side by side, he contended

that it was not necessary for the insured object to have been in the possession of an American at the time of the injury, but that it is sufficient if the damage occurred "in respect of all property . . . belonging to any of the Allied or Associated States or their nationals," and that for the rest such an injury on the part of an insured American is a damage "directly in consequence of hostilities or of any operations of war."

Hence, the Umpire said, it was unnecessary to discuss the arguments of the agents derived from the conceptions of subrogation and property.

At the same time the principles thus arrived at were extended by him to all government claims—for the neutrality period on the basis of paragraph 4 of the Annex *sub* Article 298, and for the war period on the basis of the aforesaid clause 9 of Annex 1 *sub* Article 244.

The German side adhered to the exclusively derivative character of the claims of the insurer and pointed to the fact that the circumstance that the rights of all civilized nations recognize the principle of subrogation admits the conclusion that they are not familiar with an original right of the insurer, since otherwise the development of the principle of subrogation would have been quite superfluous.

Likewise, the untenability of the consequences of the American constructions was stressed. For limiting the decision to the question of the pecuniary loss would mean that Germany would be liable for the quite legal sinking of neutral goods in so far as American direct insurance or reinsurance is interested therein; indeed that Germany, which for the American war period is liable even for the war acts of her opponents, is even responsible for the injury suffered by American reinsurers as a result of the sinking of American goods by allies of America—a case which is quite possible in the light of the ramifications of the insurance business through the medium of neutral companies.

But even if the American point of view were recognized on general principles, independently of the special rights here involved, the injury of the property of the national of one nation might give rise to a host of interventions on the part of third states by the circuitous road of covering injuries through insurance and reinsurance companies.

The German side also adhered to the points of view concerning "property" expressed in the vote on the life insurance question.

But finally it was pointed out that if it were really a question of the original loss of the insurer, he would have to deduct the premium received, which he would not be bound to do if he were suing from the

right of the insured since his injury does not represent a property damage diminished by the premium.

In the further negotiations of the Commission, a more economic factor was stressed which became the principal reason for the later compromise.

The American side had computed the maritime injuries in such a way that the individual interested party in every case had to deduct all insurance sums paid to him and that the sums paid by American insurers, and only these, were taken into account, while in the European reparations account the destroyed or damaged values were entered at the nominal value of the damage, i.e., regardless of any insurance sums paid, in particular without the deduction made by the American Government, of the sums paid by the alien insurance companies.

It was clear that this second form of calculation holds more closely to the form of estimating damages which is customary in private law, and the question arose whether the American Government was not entitled, in case its hitherto used method, contested by the German side so far as values were concerned which were not in American possession and were not insured with American companies, actually were rejected by the Commission, to resort to the "European" method, and to utilize the surpluses thus acquired in order to satisfy the contested domestic insurance claims.

The considerations connected with this line of reasoning, of an essentially practical nature, led to the result that the insurance claims, both private and governmental, were regulated by means of a compromise, the American side yielding a point.

The votes of the Commissioners did not, therefore, lead to a formal decision of the Commission, and were not included in the collection of individual decisions.

The position of the Umpire did not become openly manifest as a result of the compromise. But later he had occasion to express himself on the question, and he did so in the same sense as was done by the American Commissioner and the American agent.

In the decision of the three claims—Marine Transport Company, Docket No. 5962 (Schooner *Annie F. Conlon*), William J. Quillin *et al.*, Docket No. 6120 (Schooner *Laura C. Anderson*), and Jeanette Selinger, Docket No. 6287 (Schooner *Mary W. Bowen* and Bark *Carmela*), of April 21, 1926—Volume II, pages 654 *et seq.*—he formulated his stand on the question of the direct property rights of the insurer.

In the three cases mentioned, the sunken vessels were insured in

part by the French Government. The German agent had accordingly contested the liability of Germany to the amount of the French insurance, pursuant to the position taken by the American agent and the American Commissioner in the question of subrogation. Since, in accordance with the decisions of the Commission, the time of the occurrence of the loss was to be decisive for the computation of the damage, the German side figured the French property share in the vessels at the value of the franc on this day, while the American claimants wished the insurance deducted only in the smaller amount in which it had been paid to them in consequence of the subsequent depreciation of the franc long after the occurrence of the loss.

The decision of the Umpire stated that: "At the time of the loss the insurer had a contingent or conditional property interest in the tangible thing destroyed—the schooner—which interest became absolute and fixed upon payment by the insurer."

The amount of the property interest, in accordance with the above definition, and under the influence of the American theory of loss (see Chapter VIII) is fixed at the amount which the French insurer later paid to the insured, converted into dollars. The result is that, though the value of the object at the time of its destruction is decisive for Germany's obligation, Germany can not rely upon the time of destruction in order to evaluate that part for which no American national has a right to enter claim. The decisive question is to what extent the actual ultimate loss of the American claimant was diminished by alien participation. "This loss Germany is obligated to pay under the Treaty of Berlin to the extent—but only to the extent—that it was impressed with American nationality."

Hence—what is most interesting from the point of view of private international law—the insurer has a direct right to compensation if the object insured by him is damaged by an act making another state responsible, and if he has given compensation in accordance with the insurance contract. Thereby the requirement that the act must have been directed against a protectionable object of a citizen of a nation, and hence against the nation, was eliminated. For the direction of the act not against the insurance contract, but against the object covered thereby and being in the possession of a citizen of a third nation, is considered the basis of the obligation with regard to the insured national of another nation.

CHAPTER VIII

THE EXTENT OF GERMANY'S OBLIGATION TO GIVE COMPENSATION FOR DAMAGE IN RESPECT OF PROPERTY—"LOSS" AND CAUSAL CONNECTION

The juxtaposition in the latter part of this title signifies more the treatment of the doctrine, known also to German law, that a causal connection—or an adequate causal connection—must connect cause and effect of an act in order to constitute the responsibility for the effect. It means that out of the logical auxiliary which the doctrine of causality represents for the German legal construction, the American conception of international relations has made an independent factor for establishing justice.

This is based upon the differently developed American point of view which is influenced by political motives.

A comprehension of this difference will contribute much to avoiding misunderstandings in the future formulation of agreements, especially of an arbitral nature, with nations of Anglo-American views.

The following comments and examples will serve to make this clear.

The German construction proceeds from an act to a person or object which is covered externally by the sovereignty of another nation. If the causal connection between this act and the injury inflicted upon the other nation in the person or object concerned is apparent, the obligation of compensation exists.

The American conception places less emphasis upon the direction of the act. If an act is subject to compensation because it is either contrary to international law or entails compensation in accordance with the provisions of international law or of special treaties, without necessarily being contrary to law, it is its economic effect, the loss arising therefrom for the nation in the person or the property of one of its nationals, which justifies a claim, in so far as an adequate causal connection can be determined between cause (act) and effect (loss).

Consequently the German construction, e.g., for the delimitation of liability for reparation claims proper, proceeded from the requirement that the liable act must have been directed against the property of the national concerned. It relied in this upon the decisive provision of

clause 9 of Annex 1 *sub* Article 244, whereby Germany was to be liable for "damage in respect of all property . . . belonging to any of the Allied or Associated States or their nationals," and interpreted this to the effect that the legal ownership, incorporated in the idea of property, of an object by a person and thereby by a state to which this person belonged, conditioned and limited the German liability.

Accordingly the idea of property was fixed and thereupon the justification or non-justification of the claim was tested.

As we have already stated,¹ difficulties arose as a result of the ambiguity of the Anglo-American conception of property. In its narrow sense it corresponds to the German idea (the right of control over physical objects), while in its broader sense it is covered by the idea of "*Vermögen*" (the whole complex of economically tangible values subject to the control of the individual).

From the antecedents and text of the treaties—with regard to the Treaty of Versailles by using the French text and with regard to the Treaty of Berlin, the German text—the German side tried to prove that here the term "property" is used in its narrower sense and includes only tangible things.²

Hence the German side rejected liability for all property claims in which the damage or destruction was not based upon an act against the property itself.

The American argument was quite different. Here it was the "loss, damage or injury to . . . persons or property," i.e., the simple fact of the occurrence of loss, damage or injury from which the rightfulness of the claim was deduced.

This justification was delimited solely by the laws of causal connection.

This involves no special deductions derived from the text of the treaties of Versailles and Berlin, which go far beyond the principles of international law in their impositions upon Germany and hence are merely of ephemeral interest; it involves the basically different American point of view.

Here, under the influence of a nationalism glorified by success, wealth, and consistent education, a legal conception is developed which, in its unconsciously imperialistic force, reminds one of the *civis Romanus sum* of antiquity.³

¹ See Chapters VI and VII and especially the German vote in Decision No. VII, and the decision on the claims of the life insurance companies, p. 103 of the Decisions.

² In Decision VII the Empire approved this interpretation.

³ Cf. Andrew D. White: "The famous boast 'I am a Roman citizen,' which was the

The very fact that an American national suffers a loss as the result of an act which in itself demands compensation according to international law is justification of the American claim, independent of whether the act was directed against the person of the American national or not.⁴

This view is interestingly carried into effect in the treaties which the United States concluded in 1902, 1905,⁵ 1910 and 1914⁶ with sixteen and nineteen Central and South American states, respectively, on the arbitral settlement of pecuniary claims, and in which these claims are broadly designated as "claims for pecuniary loss or damage, which may be presented by their respective citizens."

And this view is in accord with the formulation of the General Claims Convention concluded on September 8, 1923, with Mexico, one of the signatory powers of 1902 and 1910, whereby all claims are settled by arbitration which validate "for losses or damages suffered by persons or by their properties"; and which also validate for all "claims for losses or damages . . . suffered by any corporation, company, association or partnership, in which such citizens have or have had a substantial and bona fide interest,"⁷ and which finally validate for all "claims for losses or damages originating from acts of officials or others acting for either Government and resulting in injustice."⁸

passport and armor of the Roman in any part of the world gives the idea of what ought to be the claim of the American citizen." Charles A. Beard in *Readings in American Government and Politics*, p. 295.

⁴ Cf. Chapter X. The individual American shareholder is entitled to compensation even if the corporation in which he holds shares is an alien corporation.

⁵ The treaty was concluded on Jan. 30, 1902, and proclaimed in 1905.

⁶ Concluded on Aug. 11, 1910, proclaimed in 1914.

⁷ Cf. the corresponding provision of Section 5 of the Knox-Porter Resolution: "damage . . . to property . . . through the ownership of shares."

⁸ Art. 1, Section 1 of the Convention reads as follows: "All claims (except those arising from acts incident to the recent revolutions) against Mexico of citizens of the United States, whether corporations, companies, associations, partnerships or individuals, for losses, or damages suffered by persons or by their properties, and all claims against the United States of America by citizens of Mexico, whether corporations, companies, associations, partnerships or individuals, for losses or damages suffered by persons or by their properties; all claims for losses or damages suffered by citizens of either country by reason of losses or damages suffered by any corporation, company, association or partnership in which such citizens have or have had a substantial and bona fide interest, provided an allotment to the claimant by the corporation, company, association or partnership of his proportion of the loss or damage

If here in the first part "loss" or "damages suffered by persons or by their properties" is mentioned, this signifies no restriction of the general text of the treaties of 1902 and 1910, since here the term "properties" is meant in its wider significance and includes every property relation, and since every loss or damage, in so far as it is only of a pecuniary nature, must affect such relation and hence represents a "loss or damage to property." In the sequel, the repetition of "by persons or property" is avoided, so that the general version appears once more.

The same tendency is found in the Knox-Porter Resolution, which forms an integral part of the Treaty of Berlin, with its formulation of the claims for "loss, damage, or injury to their persons or property, directly or indirectly."

The underlying thought was stressed by the Umpire in his Decision No. VI, in which the protective right of American nationals is stated most clearly. He said: "The Government of the United States was careful to incorporate in the Treaty of Berlin broad and far-reaching provisions designed to compensate American nationals for all losses, damages, or injuries suffered directly or indirectly by them."⁹

But this intention was not prompted by the idea of imposing upon Germany, as the vanquished nation, a special burden. We are dealing rather with the formulation and assertion of a general conception of the extent of reparative obligation as it is deliberately advocated by the United States.

The consequences of this idea were carried out consistently in the Knox-Porter Resolution. The resolution states expressly that even an American shareholder of a German, Austro-Hungarian, American, or other corporation is entitled to compensation for the loss suffered by his share.¹⁰

suffered is presented by the claimant to the Commission hereinafter referred to; and all claims for losses or damages originating from acts of officials or others acting for either Government and resulting in injustice, and which claims may have been presented to either Government for its interposition with the other since the signing of the Claims Convention concluded between the two countries July 4, 1868, and which have remained unsettled, as well as any other such claims which may be filed by either Government within the time hereinafter specified, shall be submitted to a Commission consisting of three members for decision in accordance with the principles of international law, justice and equity."

⁹ Decision VI, p. 209. Cf. also the identical votes of the American Commissioner in Decision VII and in the question of the claims of the life insurance companies, as well as in those of the underwriters and in the claims arising from the death of an alien.

¹⁰ Section 5 of the Knox-Porter Resolution: "loss, damage, or injury to their

Similarly the Umpire in his Decision VII, page 325, where he summarizes the meaning of the Knox-Porter Resolution. He states that American nationals who had an interest in destroyed property and who suffered damage as a result are protected to the extent of their interest, no matter in what capacity they suffered, whether directly or indirectly. And then he adds that thus construed, Section 5 is in keeping with the traditional policy of the American Government to look behind forms and to the substance in discovering and protecting the interests of American nationals. Thus Section 5 was not an extension of the provisions of the Treaty of Versailles but the expression of a principle which the United States wished to apply in interpreting the treaty in so far as no special provisions opposed.

Obviously we are dealing, not with a special claim derived from the Treaty of Berlin, but with the realization of the American conception of international law. As the Umpire says correctly in Decision VII, page 325, the sense of the contractual provisions is not the modification or extension of the doctrine of causal connection, but merely the logical working out of the theory of loss: "The indirectness of loss by American nationals dealt with in section 5 of the resolution refers to the nationality of the corporate or other entity or to the property in which they may have been interested rather than to the absence or remoteness of any causal connection between Germany's conduct and the particular losses complained of."¹¹

With the same logic, the consequences of this theory of loss in establishing and motivating the claims presented to the Commission by the American agent are developed.

The point of view which was important according to previous opinion,¹² if not altogether decisive, that through the reparable act the honor and dignity of a nation—in one of its nationals—must be injured in order to justify the espousal on the part of the nation (so important in the relation of the nations to each other) of the claims of its nationals against the other nation, is thereby subordinated. No

persons or property, directly or indirectly, whether through the ownership of shares of stock in German, Austro-Hungarian, American, or other corporations, or in consequence of hostilities or of any operations of war, or otherwise." Cf. the Umpire in Decision VII, p. 325.

¹¹ Cf. Chapter X.

¹² Cf. Decision II: "The enquiry is: Was the United States . . . injured through injury to its national?"

longer the act and its direction against the alien national is the decisive factor, but rather the pecuniary damage which arose therefrom.

A nest of claims of different nations may therefore arise from a single act whereby per se only the national of one nation is affected, and the completeness and uniformity of a settlement of the damage may thereby be made very questionable.^{13 14}

An explanation of these consequences in the light of the individual legal cases discussed below will show clearly what is meant.

On the conception of the aforementioned far-reaching protective right of American citizens were based the claims of those life insurance companies described in Chapter VI which had paid insurance to the survivors of *Lusitania* victims. The loss of the further premiums caused by premature death was conceived as "loss of property" in the broader sense. And not only the American agent but also the American Commissioner in his detailed opinion considered that Germany's obligation to pay indemnity was proved.

The consequence of this conception would have been that Germany

¹³ A good example of the complication is Decision VII treated in detail below, whereby the American charterer of a non-American vessel may be entitled to compensation for his "interest."

The arguments of the Umpire leading to this result are not primarily based upon the special provisions of the treaties of Versailles and Berlin, but on established American rule.

It is clear that in so far as Germany has already paid reparation to an enemy or neutral power for the value of a vessel, she is obliged consequently to pay in duplicate to a certain extent.

¹⁴ This is exactly what—e.g., in the case of the vessel *Antioquia*, belonging to an earlier development of the United States—the American Government maintained against a too far-reaching right of protection on the part of its citizens with respect to their interest in alien companies.

The steamer in question belonged to a company domiciled in Colombia, the *Compañía Unida de Navegación por vapor en el Río Magdalena*, the shares of which were mostly in the possession of citizens of the United States; nationals of Germany, Great Britain and Colombia being minority stockholders.

Here the American Government refused to intervene for the American interests.

The motivation contains the following sentences: "It may well be that subjects of Great Britain, France, and Russia, are stockholders in our national banks. Such persons may own all the shares except a few necessary to qualify the directors whom they select. Is it to be thought of that each of those powers shall intervene when their subjects consider the bank aggrieved by the operations of this Government? If it were tolerated, suppose England to agree to one mode of adjustment, or one measure of damages, while France should insist upon another, what end is conceivable to the complications that might ensue?"

would have been liable for all sums paid to survivors of persons insured by American companies, including survivors of British and French soldiers, and that—since Germany is also liable, during the period of war, i.e., after April 7, 1917, for injuries caused by the enemy powers in consequence of hostilities or of any operations of war, she would have been liable for sums paid by American insurance companies for German soldiers killed by enemy bullets, because these sums would have represented a "loss." For here too the above decisive criterion applied: the American pecuniary loss through an act for which Germany was liable.

In this case the decision of the Umpire rejected the American arguments, not because the correctness of the American arguments was denied, but because the claim seemed unfounded according to the special text of the provisions of the Treaty of Versailles.

The same theory reappeared in the claims of American maritime underwriters, in so far as compensation had been paid for destroyed or damaged goods or vessels of aliens. For the details we refer to Chapter VII.

Here too there was seen in the mere fact of the payment effected by the American companies a "loss" for which Germany was held liable. If this loss had been pressed only from the right of the owner of the goods, the insurer would have been a rightful claimant only if, on the principle of the transfer of the rights of the insured to the insurer with the payment of the insurance (a principle recognized as such in the civil law of all nations) he were able to press the rights of the owner of the goods. All claims from insurance cases affecting the goods of non-American nationals would thereby have been eliminated.

The justification of such claims was possible only from the point of view that the act destroying or damaging the vessel or the goods represented also a prejudice to the American insurance company. The loss suffered by the company through the act was treated as an "original loss" suffered by the nation, and hence national. The loss as such became the criterion.

And the same theory was to justify the claim of the American reinsurer, even if in the complicated nature of insurance business he was affected only as a remote reinsurer through the medium of other insurance or reinsurance companies which were intermediaries and non-American.

And under this construction, such a loss was of course also then originally American if, e.g., the sunken vessel belonged to a neutral and had

been rightfully sunk but was insured or partially or wholly reinsured by an American company.

Here too not only the American agent but also the American Commissioner deduced these consequences. And the outcome of the whole dispute was so very doubtful that Germany preferred a settlement by compromise, as has been stated.

The arguments of the American Commissioner in the basic treatment of the nationality of the claim moved in the same direction.

Under the point of view that only the claim of an American national is entitled to protection, those claims are eliminated wherein the rightful claimant has alien heirs, in accordance with Decision V prior to November 11, 1921. But in such a case too the claim of a deceased claimant should remain entitled to protection since under its non-satisfaction American interests would suffer. If the inheritance were not solvent, the fundamental principle that the rightful claimants—in this case the heirs—must be nationals of the claimant nation, should be subordinated to the protective needs of the American creditor of the decedent. Hence Germany would be held to pay to the extent of the amount necessary for covering his claim. Thus the interest of a third party, namely, the American creditor, who would otherwise suffer a loss, should take the place of the person into whose possession the claim passed by inheritance, and to a certain extent should form the criterion for the amount to which a claim, no longer national because of the inheritance, was to remain entitled to protection. That is, the ultimately material loss of an American national was the ultimate criterion.¹⁵

On this basis, with the approval of the American members of the Commission, one claim was long set aside in which the American branch of an alien corporation, which in accordance with a basic decision of the Commission was not a rightful claimant at all, but which had got into financial difficulties, had lodged claims whose satisfaction might possibly benefit American creditors. In this case a "national" claim, entitled to protection, such as had arisen in the previously mentioned case of the death of an American national, of whom aliens

¹⁵ See Opinion of the American Commissioner in Decision V, p. 153 and p. 158 *sub* 3, par. 2. Cf. also Decision, vol. 2, p. 755, in re United States of America on behalf of B. W. Loughheed, Inc., Docket No. 6967. Here three individuals sue as "statutory trustees for the stockholders and creditors" of the corporation. They are at the same time "the sole stockholders." The claim denied on material grounds negates the American nationality of one of the claimants and his interest. But it is interesting to note that it is expressly stated: "There were no creditors."

later became heirs, had never come into question. Nevertheless through the medium of the American creditor behind it, this claim was eventually to be protected to the amount necessary for averting his loss.

The American point of view came out to its full extent in deciding a third similar dispute, namely, the claim of American survivors for loss of future contributions of persons who for their part had been killed by an act of Germany but did not have American nationality.

In this case, concerning the consequences of an act committed against a person, the German defense could not use those points of view which followed in the case of acts against property from the contractual limitation of the liability—as it was maintained by the Germans—to material values.

Here too it was the loss of the American survivor of the decedent for which compensation was demanded. And here the Umpire concurred in the American view.

Starting from the provision of clause 2 of Annex 1 to Article 244, he considered Germany liable for damages suffered by the nationals of the Allied and Associated Powers resulting from the “death of civilians caused by acts of war.” The reasoning based upon this view uses general principles and agrees in theory with the construction applied by America to the life insurance and subrogation claims. “The claim of such survivor is original and not derivative.” Hence it is not the act directed against the life of the decedent—which from the point of view of the nationality of the claim would not justify the American protective claim, since in the contested cases the decedent was not an American, and hence the American nation could not be injured in his person—but the act against the American survivors, i.e., against their “rights” toward the decedent which were frustrated by his death, this act forming the basis for the national suability of the claim. If the claim of the survivors were only a consequence of the killing of the alien, it would be “impressed with foreign nationality” and not actionable. Only the independence and originality of the right to protection enjoyed by the American survivors of the alien gives rise to the act against the American nation from which follows the international case. Thus the “act of Germany” which according to international conceptions and according to the provisions in the treaties as described in Decision I conditions German liability, is in a certain sense deprived of the requirement that it be directed at the effect of the injury, i.e., in this case at the person of a non-American,

and treated as a cause for injury merely because it occasioned an American loss. Where an American "has suffered damages by reason of the loss on the *Lusitania* of the life of a British subject," the legal inference is that such a person "has unquestionably been damaged by the act of Germany in the prosecution of the war, and such damage is clearly attributable to Germany's act as proximate cause."

These principles are developed in the decision relative to the death of a British national who had American dependents.¹⁶ But they must apply also when a neutral has been killed, and according to the provisions of the treaties of Berlin and Versailles they must apply, too, when such a death took place under circumstances which involved no international liability with respect to the neutral country, since the factor of offense, of violation of international law, is not relevant so far as the originally damaged American is concerned. But with this the far-reaching significance of the principles becomes all the clearer, since in such a case the act causing the damage in itself does not belong to the acts for which Germany is liable with regard to the United States, and is brought into this category only because, by the fact that the "original" right of an American survivor is damaged, the act is directed also against American nationals.

The German side called attention to the fact that the same conditions would prevail if a non-American national with minor children dependent upon him (the children, being Americans)¹⁷ were not killed but incapacitated. The rights of the dependents for support, etc., existing at the time of the act, are the same as those which survivors would have with respect to a decedent. If the dependents were "originally" prejudiced by the act, then even in the case of a mere injury an independent protective right would be bound to result.

This "theory of loss" is limited only by the principles of the doctrine of causal connection, as they are treated in Decision II, page 13, in the two decisions on war risk insurance premiums, pages 33 and 71, and in the decision on the life insurance claims, pages 133 *et seq.*

"The simple test to be applied in all cases is: has an American

¹⁶ See Decision, pp. 195 *et seq.* In his survey of the decisions of the Commission (*American Journal of International Law*, January 1926, pp. 70 *et seq.*), Borchard, relying upon the reasons adduced by the Germans, called attention to the danger lying in this decision of the Umpire.

¹⁷ This is not a far-fetched case, since every child born in the United States has American citizenship, and since on the other hand there are many immigrant families living in the United States (especially laborers) who never acquired American citizenship.

national proven a loss suffered by him, susceptible of being measured with reasonable exactness by pecuniary standards, and is that loss¹⁸ attributable to Germany's act as a proximate cause?"

That is, the fact of the financial loss suffered by the American national motivates Germany's liability if and in so far as it can be traced to Germany's act as the "proximate cause."

But the decisive factors for such a causal connection are not derived from special contractual provisions, but from the general legal principles of the doctrine of "proximate cause," "which clearly the parties to the treaty had no intention of abrogating" (Decision II, pp. 12-13).

Its development first came into question in connection with the claims for compensation for war risk insurance premiums.

In the light of the theory of "loss," and under the influence of the treatment of such claims in connection with the Alabama case, these claims were motivated so far-reachingly by the American agent that the American counsel, when asked by the Umpire in the course of the proceedings where the limit for the effect of German acts was to be found, replied that this limit was left entirely to the decision of the Commission.

In Decision II, page 13, this point of view was expressly rejected.

But the principle of causality is interpreted broadly. "It matters not how many links there may be in the chain of causation connecting Germany's act with the loss sustained, provided there is no break in the chain and the loss can be clearly, unmistakably and definitely traced, link by link, to Germany's act."

Even the indirect loss is included—perhaps under the influence of the broad text of the Treaty of Berlin, "provided only that in legal contemplation Germany's act was the efficient and proximate cause and source from which they flowed."

In this formulation of the doctrine of causality, the claims for war risk insurance premiums had to be denied in view of the nature of the "test

¹⁸ How vague and in need of exact definition the term "proximate cause" still is, is shown by the fact that the British Government did not include claims for loss of profit in its reparations bill because they represent only "indirect and consequential damages," that is because the causal connection making compensation obligatory is denied. Germany's contractual restriction, following from the Treaty of Versailles, to compensation for "material damage" is not even mentioned.

On the other hand it is clear that in numerous international decisions, which have been approved by German writers too, the claim for compensation for loss of profit which is familiar in the civil law of all civilized nations, is admitted from the point of view of causal connection.

cases" submitted to the Commission, since the war as such could not be looked upon as an "act committed by Germany" and since for the rest, the individual German war measures as compared with the totality of risks confronting neutral shipping in such a war were too remote to serve as the cause for the loss "in legal contemplation" arising from the payment of the war risk premiums.

But the American agent believed that he could remedy this factually defective motivation by selecting a case wherein the connection between a German war measure and the payment of the war risk premium was clearer. Hence he reintroduced before the Commission the question of the reimbursement of the premiums, under circumstances in which the plaintiff, the Eastern Steamship Lines, Inc., a company domiciled in Maine and plying the New England waters, insured its vessels against war risks under the impression and in direct consequence of the sinking of the *Perth Amboy*, a tug belonging to the Lehigh Valley Railroad, by a German submarine on the morning of July 21, 1918, off the coast of Massachusetts.

Here the relation between the German act, the cause of the damage,¹⁹ and its effect, the payment of the war risk premiums, was clearer.

But in this case too the claim was rejected, the causal connection being denied—Decisions, pages 71 *et seq.*

The decision is based on the fact that the action of the submarine caused the loss of the sunken tug only proximately. If in addition to the fact that the population was disturbed by the sinking, and if in consequence of such uneasiness, the plaintiff company decided to insure its fleet against war risk, it was the company's own volition which occasioned these expenditures, namely, the payment of the premium.

The cause of the insurance was not the menace caused by the actual German acts, but the fear of similar acts on Germany's part, not committed but merely threatening.

Hence an act committed by Germany is denied to be the proximate cause of the loss.

While in this case, accordingly, it is the lack of the causal connection, of the "link by link," which is interrupted by the intervention of the plaintiff's own volition in taking out the war risk insurance, which explains the denial of the claim; in the life insurance claims it is not the interruption but rather the limitation of the causality, as it followed

¹⁹ The question how in this case and in the others there is "damage" involved, although the sums demanded had possibly devolved upon third parties, is not relevant here.

from the interpretation of the special provisions of the Treaty of Berlin, which among other things led to the denial of the claims.

The rigid observance of the principle that Germany is liable if an American national has suffered a demonstrable pecuniary loss, in case it can be traced to an act of Germany as a "proximate cause,"²⁰ would quite generally lead to an obligation for compensation, also with respect to contractual rights which were prejudiced by an act of Germany.

The above discussed right to compensation of American survivors of alien decedents lies decidedly in this direction.

Nevertheless, this consequence was rejected in the suit of the life insurance companies, and for compensation claims derived from a purely contractual nexus, a further prerequisite was posited, namely, the "intent of disturbing or destroying such contractual relations."²¹

And beside this prerequisite, the foreseeability of the damage is further postulated with the well-founded reference to the fact that "the ever-increasing complexity of human relations resulting from the tangled network of intercontractual rights and obligations are such that no one could possibly foresee all the far-reaching consequences, springing solely from contractual relations, of the negligent or wilful taking of a life."

The motivation of the decision is here based upon the contractual relations in the case of the death of a person. The same principles occurring also in German law, must be applied appropriately to material damages and their consequences, so that the broadly conceived principle of the full logical effect of a cause for damage was not applied as far-reachingly as its formulation might have admitted.²²

A further restriction of the causal connection is recognized when the plaintiff himself was at fault.

The question was touched in the case of *Eisenbach Brothers & Company v. Germany* (Docket No. 5257, pp. 267-72).

²⁰ As was cited above: "has an American national proven a loss suffered by him, susceptible of being measured with reasonable exactness by pecuniary standards, and is that loss attributable to Germany's act as a proximate cause?"

²¹ Life Insurance Decision, p. 137.

²² Hence the claims for compensation for additional costs which an American incurred because in consequence of the death of a relative the burden of supporting a joint relative fell upon the survivor alone, were also rejected; likewise the claims for compensation for damages which arose from the loss of the decedent who was a partner or served as an employee of the plaintiff. Cf., e.g., Docket No. 2263, *Myers v. Germany*.

In this case, compensation was demanded for the sinking of a lot of raw hides aboard the steamer *Kerwood* when, on December 1, 1919, she struck a mine in the North Sea and sank. Germany contested her liability by the fact that through the provisions of the armistice of November 11, 1918, she was prevented from engaging in any further activity in the North Sea and consequently could not be held responsible for the condition of the mine fields after that date. "A man who is forcibly prevented from closing a knife opened by him cannot be liable for a damage caused through such knife to him who prevented the closing" (p. 269).

The decision rejects this plea and establishes the German liability. The uncertainty whether it was a mine of Germany or of the Allies is considered irrelevant since according to clause 9, Annex 1 *sub* Article 244, Germany is responsible also for war measures of her enemies and since it could be a question only of an "allied" or a German mine.

But the circumstance that the mine had been planted long before and that meanwhile Germany's activity at sea had been modified was declared irrelevant, and the causal connection was regarded as uninterrupted.

"The act of a belligerent in planting it, while remote in time from the damage which it caused, is not remote in natural and normal sequence. On the contrary, the mine effectively performed the very function it was intended to perform—the destruction of shipping."

But the decision contains the significant restriction: "It may be that cases will be presented in which such causal connection has been broken through negligence on the part of the one suffering the damage or his agents, or by some other intervening cause, which in turn constitutes the proximate cause of the damage" (p. 271-2).²³

An interesting further development of the theory of loss is found in Decision VII of the Umpire, pages 308 *et seq.*

The starting point of the dispute there to be decided was in the first place the interpretation of the term "property" in the sense of the treaties of Berlin and Versailles, and that of the term "belonging to" as used in clause 9 of Annex 1 to Article 244 to establish the national

²³ It is noteworthy that here the Umpire obviously applies the American civil law conception to international cases. American law does not recognize the apportionment of damage between both parties in the case of concurrent offenses, but uses the principle that a concurrent offense of the other party removes the liability.

Decisions of international courts have often rendered awards which are at variance with the European principle of the apportionment of damages.

relation to the property, "damage in respect of all property . . . belonging to any of the Allied or Associated States or their nationals"; and in the second place, the question whether and to what extent Germany under the treaty provisions was responsible for loss of profit in the case of reparations and neutrality claims.

As a test case for deciding these questions, the agents selected a case in which a Norwegian vessel, the *Vinland*, which was chartered to an American, was sunk and in which the charterer demanded compensation for loss of profit.

The German contention conformed to that made in the life insurance and marine underwriter claims arising from war and neutrality damages, viz., that the conception of property in the sense of the treaties corresponded to the German conception of "*Eigentum*" and referred only to real, tangible things—in contradistinction to the term "property, rights and interests," used in the case of liability for extraordinary war measures; and that hence only real damage to things, to the exclusion of compensation for loss of profit, is liable to compensation.

The Americans interpreted "property" in the broadest sense and considered every American interest as protected and entitled to compensation—pursuant to the principles developed in conjunction with the claims arising from the death of non-American dependents and in conjunction with the claims lodged by the life insurance and marine underwriter companies.

This disagreement involved the theory of nationality, since the *Vinland* was a non-American vessel; and the American side considered Germany liable for the damage caused by the sinking of the *Vinland* even in case Germany's liability were limited to material damage, because the vessel "belonged" to the charterer.

The American argumentation adhered to the definition of "belonging to" given by the Commission through the Umpire in the decision concerning the term "naval or military works or materials," pages 94–5, in connection with the decision on the German liability for sunken Dutch vessels requisitioned by the American Government.

Thereby the control of and the material interest in the object was declared essential. "It is sufficient that the United States or its nationals had such control over and interest, general or special, in such property as that injury or damage to it directly resulted in loss to them." The decision also emphasized the fact that the risk was borne by the controlling party.

The American side tried to meet this definition by showing that the charter in question signified more than a purely obligatory relation, and that it was a "demise," a conception approximated by the German "*Ausrüster-Verhältnis*."

With the questions arising from these differences of opinion, the discussions of the two agents and the vote of the German Commissioner dealt, when meanwhile it had appeared in the course of the labors of the Commission that it would be expedient to formulate a general statement of the differences of opinion existing between the agents, and meanwhile, having been brought to the cognizance of the Commission.

In agreement with the German Commissioner, the later formulated vote of the American Commissioner was given a broader formulation which decided as far as possible all questions which had meanwhile arisen in this connection. And after the original vote had been supplemented by the German side (supplement of May 12, 1925), the whole group of questions as such was submitted to the Umpire for decision.

Hence the treatment of the *Vinland* case assumes an unimportant rôle in the decision of the Umpire. But he was afforded an opportunity thereby to give his decision a broader and more far-reaching basis in a large, interesting way.

In the two questions pertaining to the restriction of German liability to real material damage (p. 317) to the exclusion of compensation for loss of profit and with rejection of the interpretation of the *Vinland* charter as a "demise" (p. 333), the Umpire agreed with the German point of view.

The reasons given by the Umpire in the first question are exhaustive and politically interesting. But they do not concern the present question, so that it suffices to refer to the decision of the Umpire (pp. 308, 329).

On the other hand, the reasons given for rejecting the construction of the charter as a demise have no general interest, since the Umpire declares that this question is not decisive. He stated: "Nor is the question as to whether a particular charter is or is not technically a demise, as that term is used by municipal tribunals, controlling in determining the right of the charterer of a ship which has been destroyed to an award under the Treaty of Berlin" (p. 334).

With the abandonment or certainly the extension of the earlier definition of "belonging to," a "*jus in re*" is posited which is derived

from the right to the use of the vessel but has a marked economic character.

"Where, under the terms of a then existing charter-party, the charterer was at the time of the loss entitled to the use of the ship on terms which would have had the effect of reducing the price which the owner could have obtained for it if sold burdened with the charter, then at the time of the loss the charterer had a pecuniary interest in that particular ship, a *jus in re*, a property interest or property right the subject matter of which was the ship, an interest entering into and inhering in the ship itself" (p. 336).

And this interest in the ship, this *jus in re* is then summed up (p. 340) under the conception of "property . . . belonging to" as used in Clause 9 of Annex 1 to Article 244, Treaty of Versailles. "The charterer's interest in this vessel under this contract was 'property . . . belonging to' the charterer within the meaning of that term as found in the Treaty."

This property thus defined, the nature of which is also apparent from the term "time-charter owner" frequently used in British and American law, is recognized in a practical way as "estate carved out of the ship and handed over for a specified term to the charterer" (p. 341). But this estate, it must be emphasized, is not identical with the amount of profit lost by the charterer to which it is not related theoretically.

In the case of the sinking of the vessel, the owner is entitled to compensation for the market value of the vessel. But if the vessel—at a time of high freights—is burdened with a long time-charter dating from a period of lower freights, the owner, to whom the high freight rates which the vessel can earn in the open market at the time of sale do not accrue on account of the charter, would receive more by the award of a compensation computed on the full market value than the ship was worth to him at the time of the loss. For the market value is determined in great part by the current freight rates. Consequently this surplus represents in truth the interest, the property of the charterer.

If for instance the monthly charter rate were \$1000, while at the time of the sinking of the vessel (which would be decisive for determining its market value) the current rate was \$1500, only the monthly difference of \$500 and not the market profit deducible from a possible later increase in freight rates would be decisive for determining the estate of the charterer as his share.

These findings and the reasoning leading up to them have been warmly received among leading American jurists as being in harmony with the general American view and construction. And on the other hand, despite its dependence upon the special provisions of the treaties of peace, the decision rests so strongly upon general legal concepts that we may expect to meet it again in the future administration of international law, certainly in so far as the United States is concerned.

Hence it is well to pause a moment over its motivation and application.

As we have shown, it is based upon the interpretation of the right of the time-charter owner as a *jus in re* covered by the conception of "property . . . belonging to" of the Treaty of Versailles.

As was stated above, the conception of "belonging to" had already come under the cognizance of the Commission in the decision on the meaning of "naval and military works or materials," pages 94-5. At that time the control—the possession and the material interest in the object, following from the assumption of the risk—was declared essential.

In the present decision the assumption of the risk is ignored and the characteristic of property (which is assumed in the case of the time-charterer who uses the chartered ship) is extended: Actual possession is replaced by the right to possession, i.e., to future possession. Accordingly in the decision United States on behalf of Gulf Export Company *v.* Germany, Docket, No. 6629; Decisions, Vol. II, pages 725 *et seq.*, the claim of a time-charterer is examined who had chartered two Norwegian ships which had been sunk prior to their transfer to the charterer, "before the time arrived when they could be delivered for loading in the usual course of shipping practice the charters were terminated through the destruction of the ships." The claim, the purely obligatory basis of which can not be doubted, was denied on the purely material ground that the relation of the charter-rate to the current rate gave the plaintiff no estate in the ship. But the decision raises no scruples against his inclusion among those entitled to compensation. (Cf. also United States of America on behalf of West India Steamship Company *v.* Germany, Docket No. 6970; Decisions, Vol. II, pp. 753-54.) In the case United States of America on behalf of Gans Steamship Line *v.* Germany, Docket No. 6625; Decisions, Vol. II, pages 737 *et seq.*, the claimant was also awarded compensation in an instance identical in this respect. Here the British steamer *Themis* had been chartered for a longer period, for the summer months to the

Nova Scotia Company, and for the winter months to the claimant. The ship was sunk while operating in charter for the Nova Scotia Company. Nevertheless a *jus in re* was conceded to the Gans Steamship Line and compensation awarded.

Similarly an American sub-charterer who had taken a Japanese ship in sub-charter from a British time-charterer, was awarded compensation. (United States of America on behalf of Barber and Co., Inc. v. Germany, Docket No. 6969, p. 750.) "This subcharter in effect sublet the ship to the claimant for a limited period at an increased hire and assigned to claimant a proportionate interest in the chartered owner's interest in the vessel, which, on such assignment, became impressed with American nationality."

The decisions do not clearly show to what extent the travel-charterer would also, over and above this, have a *jus in re* which would be entitled to protection. In so far as the decisions deal with such claims they were decided against the claimants. But none of the decisions show that the basic principle that such claims could never establish a *jus in re* was one of the decisive factors. (Cf. the case of Barber & Co., Inc. v. Germany, Vol. II, p. 750, already cited in another connection, and the case of M. A. Quina Export Co. v. Germany, Vol. II, pp. 757-8.)

But the extensive development of the idea of "belonging to" was possible only by the simultaneous extension of the idea of "property."

It is significant that in his decision (cf. e.g., the above quoted sentences) the Umpire used not only the term "property" in his motivation, but also the terms "property rights" and "property interests." Thereby he adduces concepts which in the Treaty of Versailles were quite consciously not to be applied to reparation claims, which according to the decision of the Umpire are on a par with neutrality claims. For the reparation claims, the obligation of compensation is restricted to the damage suffered by enemy "property . . . belonging to," while for the damage caused by the application of extraordinary war measures, the liability extends further to all damage suffered by enemy property, rights and interests, Article 242 making it clear that this involves liability on the part of Germany which is purposely of a different nature.

The application of "property rights" and "property interests" to a claim belonging to the reparations class seems all the more objectionable since the legal nature of the claim of the time-charterer is in itself by no means free from doubt.

The motivation with which the Umpire (p. 334) rejected the distinction between an ordinary time-charter and the demise connected with far-reaching rights, admits the conclusion *prima facie* that he would derive the definition of a claim entitled to compensation from the special provisions of the Treaty of Berlin. "Nor is the question as to whether a particular charter is or not technically a demise, as that term is used by municipal tribunals, controlling in determining the right of the charterer of a ship which has been destroyed to an award under the Treaty of Berlin."

But it can not be assumed that this was actually the conviction of the Umpire (which would not have been motivated) since in the same decision he clearly expressed the opposite view. On page 336 he discusses the right of the charters, which he designates as *jus in re* (see above quotation). He then continues, saying that such a right and interest is an encumbrance of the ship in the sense that it represents a limitation of the right of the owner in the possession, control, and use of the vessel and consequently influences the price at which he might sell it with this encumbrance on the open market. "It is an interest in the subject matter which the municipal courts will protect against both the owner and those claiming under him with notice thereof." Apparently, the decision is here based upon civil law conceptions which alone can be the basis of the protection of civil law administration. A different interpretation would be difficult to understand for the treaties of Berlin and Versailles nowhere define "property, rights, interests, belonging to," nor have they expressly formulated these terms in a deviating manner. Hence the civil law relations for which the protective provisions of the treaty are intended, can acquire their content and delimitation only from civil law.

Accordingly, any future development and utilization of the thoughts of the Umpire will have to take into account the legal nature of the rights of a time-charterer.

But to what extent the conception of a right accruing from a time-charter as a *jus in re* and a property right, with its far-reaching international effect, agrees with the present status of Anglo-American law, is a question which at first sight is still open.

Thus in the Tamplin case (1916, 2 A. C. 397), decided by the House of Lords, we find the sentence: "the charter is a contract by which the ship-owner during a certain period agrees to do certain work for the Charterer, but is not a contract under which the charterer has any interest in the ship except that it is the vehicle with which the ship-

owner is to do the agreement work." And in the *Norburn* case—*The Federated Coal & Shipping Company v. The Crown*, 10 Lloyd's List Law Reports 620 (1922), Justice Bailhache said (p. 621): "The suppliants—the charterers—had no property in the *Norburn*. They were not in possession of her. Their charter-party was not by demise." And in *Dominion Coal Company v. Maskinonge Steamship Company, Ltd.*, 1922, 2 K. B. 132 to 138: "A charterer, if there be no demise, has no property in the ship, nor has he even possession: *Scrutton L. I. in Elliot Steam Tug Co. v. Shipping Controller.*"

Also in the American decision of the Circuit Court of Appeals, Second Circuit, June 7, 1926, No. 272, in re *Flint et al. v. Robins Dry Dock and Repair Company*, the court, in opposition to the view of the first court, held that "no property interest, not even possession, had been created in the vessel as an agent of the time charterer." The decision, not yet legally binding at the time of writing, lies in the direction of the Umpire's decision, granting the time-charterer, of a ship (*Bjoernford*), the repair of which in dry-dock was delayed by negligence on the part of the contractor for the repair, a compensation claim against the contractor.

There are good reasons why these theoretical scruples are subordinated in the Umpire's carefully considered decision. It is characteristic of the American point of view, which makes its approach from the opposite angle: It is the American theory of loss which is here again maintained and which is deduced and delimited in clever and suggestive form by the limitation of German liability to material damage, as provided by the treaties of peace. According to the Treaty of Berlin and its interpretation by the Commission, Germany is liable in the case of claims like the present one, only for the market value, i.e., for the objective value of the destroyed object as such, i.e., according to the interpretation given by the Commission: the object disjoined from its relations to third parties.

But if within this value thus to be determined, a portion economically accrues to a third party, and if therefore the loss of the object itself signifies a loss for him on the basis of this relation, this third party is entitled to compensation for his share within the limits of this material value, without increasing Germany's liability, which is limited to the material damage.

If the two claimants, in this case the owner and the charterer, are both Americans, the Commission has fulfilled its task by determining the market value of the vessel which calls for reparation. A settlement

among the interested American parties themselves is a matter for the regular American courts in case of dispute. If only one of them is an American, then only his claim is subject to the jurisdiction of the Commission.

If X were the value of a non-American vessel as such, i.e., the free vessel, and if Z were the estate whereby the market value would decrease if the charter (unfavorable for the owner and low in comparison with the actual freight market) were taken into account in the sale, then in case the charterer is an American, he will receive the amount Z of the market value of the ship computed independently of the existence of the charter. And if, on the other hand, the ship were of American nationality, but the charterer an alien, the American owner receives $X-Z$.

Just as this principle may lead to a partial liability of Germany in case of a non-American vessel which was sunk, so it may lead to a diminution of German liability in the case of an American vessel.

But in so far as the ship or the object does not belong to an American owner, the broader interpretation of "property belonging to" always leads to an interruption of the principle of nationality and to a broadening of German liability which is contractually limited to material damage.

The *Vinland* was a neutral ship. It was rightfully sunk, even according to the decision of the Umpire, page 339. But if American usufructuary right existing in it is an estimable factor of value within the value of the ship, the American usufructuary is entitled to compensation to this extent.

The fact that at the same time the vessel undoubtedly belongs to a neutral owner, who has no claims whatsoever, does not oppose this.

It is interesting to mention that the encumbrance of the value of a ship derived from a charter need not be identical with the ownership interest of the charterer. So there were among the cases presented to the Commission a few in which tank vessels were chartered at very unfavorable rates for the owner but with the clause that the vessel could not be used for the transport of contraband, nor for voyages in the waters of the war zone. In these cases the diminution in value of the vessel itself, i.e., the encumbrance through the charter, was considerable on account of the low charter rate. But subjectively the interest of the charterer, who because of the clauses was quite restricted in his use of the vessel, was unproportionately much slighter.

Other difficulties result when various ownership interests of this

kind collide. It must be remembered that in view of the same legal conception the insurer too has a limited ownership interest in the insured object which becomes unlimited through the payment of the damage. Now if a neutral vessel chartered to an American is fully insured by an American insurance company, the rights of the charterer and of the insurer must collide since Germany is not liable beyond the value of the ship.

For the rest, this case indicates that both the usual practice and the civil law of seafaring nations do not recognize the alien ownership interest of the charterer in a vessel. For though the owner may insure only his interest (apart from exceptions which do not interest us here), the full insurance of the vessel on his own account is not denied him despite existing encumbrance of his vessel.

Beside these more constructive difficulties, the difficulty, quite extraordinary under war conditions, of computing the various estates and their relations is of importance. In order to remove or at least diminish these difficulties, the Umpire, in extremely careful and well-planned form, compiled the principles in Decision VII A which guide the determination of the market value of vessels on the one hand, and of the estate of the charterer on the other. For the points which are here relevant, we refer to this interesting decision.

The question of the criterion for appraising destroyed material values in general and ships in particular occupied the Commission as early as the spring of 1924 (cf. also Decision III).

The depreciation of the value of ships had brought it about that in 1924 a ship of the same value could be purchased at a much lower price than at the time of sinking. Hence the question arose whether Germany was to make amends for the former higher price which in some cases could now purchase two or more vessels of the same type, or for the present price.

The decision rendered to settle this difference of opinion is given among the decisions, pages 330-1, note 19. It deals first of all with the time which is to be decisive for computing the damage. But it establishes also that the "market value" and in the absence thereof the "intrinsic value" is to be restored. This decision is then further developed in Decision VII, page 331, in that the Umpire, in connection with the question of compensation for loss of profit, shows that in estimating the reasonable market value, the individual circumstances of the case, e.g., in case of a factory the capacity maintained by it, its earning capacity and even the good-will of the firm, i.e., circumstances

independent of the objective value of an object, must be taken into account.

These views, then merely suggested, were very carefully developed in Decision VII A for the question of appraising ships, and in connection therewith the perhaps still more difficult question of appraising the estate of the charterer was considered just as carefully. For this second part of the decision, it is noteworthy that it abandons the former view that the estate of the charterer has a market value "if the hire stipulated to be paid thereunder was less than the current marked price, this charter had a market value" (p. 340)—"for charters have never to any considerable extent been sold and purchased for a present out-of-pocket cash consideration" (p. 709).

In application of the principles of this decision, the Umpire himself then decides a number of cases, weighing and utilizing the complicated facts in exemplary fashion. These cases are reprinted in the English edition.

The decisions deal not only with the appraisal of the estates of time-charterers, but include also other data in which the principles laid down in Decisions VII and VIIA lead to legally interesting results.

Thus in the case United States of America on behalf of Standard Oil Company of New York *et al.*, Docket Nos. 5323, 5434, 5469, Vol. II, page 660. Here it is a question of making reparation for the value of tank steamers owned by British companies, the stockholders of which were the claimants, the steamers having been requisitioned by the British Government. The British Government had restored the value of these vessels since they were requisitioned. But the claimant stockholders demanded from Germany the additional value, about seven millions of dollars, which the vessels would have had as "free ships." The claim was denied since the sinking affected only ships which because of requisition had only a lower market value (the requisition signified an encumbrance of their value), and since Germany could not be held responsible for the depreciation caused by the requisition.

Another case concerned the claim of the Housatonic Steamship Company, Inc., Docket No. 44, Vol. II, pages 689 *et seq.*, an American company which had purchased the German steamer *Georgia* which had sought refuge in an American port at the outbreak of the war. In February 1916, the company chartered the vessel to a British firm for the duration of the war, with the provision that the chartering firm was to secure from the allied governments a guarantee against confiscation of the ship. The charter amounted to about seven

shillings as against thirty-two shillings, the then current rate. In February 1917, the vessel was sunk. The claim was denied because under the circumstances the ship had only a slight value for the owner, covered by the insurance sum received.

Unfortunately no decision was reached regarding the question what the compensation for this estate of the charterer would be in case a ship were not destroyed but merely damaged. Decision VII A itself in its recapitulative conclusion, looked toward such a compensatory right in favor of such an estate even in the case of merely damaged vessels. For it expressly prescribes the development of all points discussed in the decision for claims wherein an American interest not comprising the full value of a destroyed or damaged ship is pressed.

But on the other hand, in the case United States of America on behalf of American-Hawaiian Steamship Company, Docket No. 6454, pages 844 *et seq.*, the Umpire agreed with the German view whereby in the case of damaged ships Germany, according to the provisions of the treaty, is essentially responsible only to the owner for costs of repairs.

An attempt to evade the limitation of German liability to the value of the object itself, relying upon the mortgage right to the cargo for the earned freight, failed. It was made with detailed motivation in the case of United States of America on behalf of Arthur Sewall and Company, *et al.*, Docket No. 6070, Vol. II, pages 674 *et seq.* According to the legal provisions applying to the case, no claim existed for the partial freight earned up to the sinking of the ship. Hence in accordance with the German view, the claim was denied by the Umpire because a right to the freight would have accrued only after the completion of the voyage.

It seemed expedient to mention these examples and to deal in detail with the basic question in order to show the significance of Decision VII of the Umpire. But in part we have digressed from our subject proper, the treatment of the theory of loss.

In taking this up again, we should mention first the extension of the idea of loss, which rejected the German point of view and saw the decisive criterion not in the actual prejudice to the party concerned but in the objective fact of the destruction of a material value belonging to an American national.

The question was decided in appraising the loss of the bunker coal when the ship was sunk. In many cases the owners had received the freightage, and hence the German agent took the view that in such a case the owner suffered no damage by the sinking of the coal intended

for the boilers because this coal, intended for use on the voyage, was covered by the freightage received.

The Decision VII, page 343, rejected this plea.

It was decisive that obligatory relations which possibly touch the purely pecuniary side of the loss should be disregarded, and that only the objective act of destruction of the material value belonging to an American national is necessary for assuming that a loss has occurred.

The same point of view had to be applied when goods were sunk which had been sold to an alien who bore the risk of the voyage, the ownership however still being in the hands of an American. This is an objective development of the loss theory whereby the loss is deprived of its capacity of damage caused thereby.

CHAPTER IX

NAVAL AND MILITARY WORKS OR MATERIALS

Clause 9 of Annex 1 *sub* Article 244 of the Treaty of Versailles, in providing that Germany is not responsible in the case of damage with respect to "naval and military works or materials," introduced a conception into the treaty which does not conform to the generally recognized terminology of international law.¹

The question of its application confronted the Commission in the more restricted formulation, the problem being to decide which ships were "naval and military materials."

A decision was reached by submitting to the Commission a number of different test cases, all belonging to the American war period. The cases are mentioned and discussed in the "Opinion construing the phrase 'naval and military works or materials' as applied to hull losses and also dealing with requisitioned Dutch ships."

The American agent took the position that Germany's exemption from liability for "naval and military works or materials" was a concession on the part of the victorious powers "voluntarily concluded to forego making claim for losses of property, the economic use of which was solely or primarily for war purposes." Invoking the armistice, wherein Germany bound herself "to provide for repair of damage done," the exemption granted to Germany in clause 9 was interpreted as a "partial remission by the Powers of rights accorded them by Germany in the Armistice" and its extent in case of doubt was to be interpreted strictly against Germany.

Relying upon the interpretation of the Reparations Commission, whereby the exemption clause includes:

- (a) independently of the question of ownership (governmental or private)—all vessels used "for offensive operations" and
- (b) vessels owned by the naval authorities and used "in connection with operations of war, whether offensive or defensive,"

¹ A similar but more restricted term is found in the treaty between the United States and Algiers of September 5, 1795, wherein Art. II mentions "naval and military stores, such as gun-powder, lead, iron, plank, sulphur, timber for building, tar, pitch, resin, turpentine and any other goods denominated naval and military stores."

three classes of vessels were conceded by the American side as coming under the exemption clause:

(A) Ships owned by the United States, devoted to war purposes and "commanded and manned by officers and men in the naval service of the United States."

(B) Ships privately owned if transformed into vessels of war and in the direct control of the United States. Such ships are under naval command and are intended "clearly for war purposes of an offensive character." In the main, they conform to the provisions of the Hague Convention of 1907.

(C) Ships owned by the United States, built or acquired from means appropriated for the Navy or War Department and "engaged in an operation of war, either offensive or defensive."

This latter class would include troop transport and fleet supply ships under permanent military control, belonging to the government and acquired from means appropriated for the Navy or War Department; also other ships belonging to the government, under the control of the Shipping Board and assigned by it to the Navy or War Department, manned by a navy or army crew under military control and engaged "in operations of war, either offensive or defensive."

This American formulation, in agreement with the interpretation of the Reparations Commission, holds that privately owned ships come under the head of "military and naval materials" only if used for offensive purposes. But the definition is narrower than that of the Reparations Commission in so far as it also prescribes naval command for privately owned vessels, and a naval crew for vessels owned by the government, in so far as they are not "regularly commissioned vessels in the Navy and Army Service."² This expressly excludes those ships which were assigned to the War or Navy Department by the Shipping Board but were manned by a civilian crew.

The German side, pointing to the genesis of the clause, contested the alleged voluntary concession, with the deductions made from it, and in opposition to the American interpretation, which concerned itself mainly with the ownership question, it emphasized the criteria of "use" and "purpose" in connection with the "military effort" pursued thereby. Considering this position, the German view included in the exemption clause:

(A) Ships "incorporated in the United States Navy,"

(B) Ships controlled by the army or navy or some other military branch.

² Cf. pp. 43, 46, 53 of the American writ.

For these two classes the proof of non-military use was to be inadmissible.

(C) Ships controlled in some other form "by other United States authorities," except if used exclusively for peaceful commercial purposes.

Here the presumption was to be refutable by evidence to the contrary.

(D) Merchant ships armed by the American Government.

(E) Ships convoyed by United States naval forces; and finally

(F) Ships having a relation to the governments of other Allied or Associated Powers corresponding to one of the relations under A-E.

In so far as this briefly summarized German position, in connection with the genesis of clause 9, reverts to the armistice and its antecedents, it is sufficient to refer here to what was said in relation to the neutrality claims, and to the remarks of the Umpire in Decision VII.

By way of supplement, we may repeat that the text of Article 232, paragraph 2, agrees verbally in its essential points with the reservation of the allies accepted by Germany and thus made a part of the peace agreement of November 5, 1918. According to this, Germany was to give compensation for all "damage done to the civilian population" of the allies and their property by the aggression of Germany "by land, by sea, and from the air." Paragraph 2 of Article 232 repeats this restriction of Germany's obligation to damage inflicted upon the civilian population, and then in clause 9 of Annex 1 *sub* Article 244 to which paragraph 2 of Article 232 refers in a broad way with the words: "and in general all damage as defined in Annex 1 hereto," the liability is extended to all property "wherever situated" and "belonging to any of the Allied or Associated States or their nationals." This extension doubtless exceeds the agreement of November 5, 1918, and hence can not be interpreted as a voluntary restrictive concession of the victorious powers, since as late as the summer of 1919, in the reply to the German remonstrances against the conditions of the Versailles draft, the allies had declared that the draft had been made "with scrupulous regard for the correspondence leading up to the Armistice of November 11th, 1918, the final memorandum of which dated November 5th, 1918."³ Thereby Germany's right to observe the conditions concluded in November 1918, is again recognized as a matter of principle, so that the extension of German liability made in clause 9 is a deviation from the agreement which in case of doubt must be interpreted against the deviators.

³ Temperley, *A History of the Peace Conference of Paris* (London, 1920), Vol. II, p. 311.

For the rest, the position maintained by the German agent—as well as the American view—was valuably motivated in detail in the two memoranda in connection with the individual categories formulated by both sides. We must refer thereto for a further study of the questions to be decided. In discussing the points of view upon which the decision of the Commission is based, we shall revert to these questions.

In the very detailed and comprehensive discussions and negotiations in the Commission, which preceded the decision, it was agreed that the term “naval and military works or materials” must in the main be defined from the treaty itself. For this purpose Articles 209 and 210 were used, but above all Article 202, which—in a more restricted context—provides in the case of surrender of military automobiles and naval aeronautical material, that for the surrender of certain specified categories all materials were to be included “which are or have been in use or were designed for warlike purposes”—a provision which was then extended in Article 210 for “military and naval aeronautical material” in such a way as to include material capable “of being used by aircraft.”

Thus for purposes of objective delineation three categories were envisaged: “things in use, things designed for use and things capable of being used”; and for theoretical delimitation three questions: (1) What is use in this case? (2) Used by whom? (3) Used for what?

1. For the definition of “use” it is sufficient that it be actual, but this actuality is not alone decisive.

Railway tracks used for the movement of cannon to the line of battle are—by virtue of this actual use—military material.

But this use is not always decisive. The cannon in the reserve depot behind the front and the rails intended for the transportation thereof are not in actual use but at the direct disposal of those in charge of the conduct of the war—in a sense in “constructive” use,⁴ while the cannon and the rails being transported aboard are only designed for its use.

But this distinction is materially irrelevant in that the designation for the use must suffice as a characteristic of “naval and military material.” The distinction was expressed in the decision of the *Umpire* (p. 78) in two forms. In the first place, no compensation is due for “property . . . designed or used for military purposes.” In the second place, mention is made of “property impressed with a military charac-

⁴ This designation employed in the discussions is similarly used in the *Opinions of the Commission*, No. II, p. 99.

ter either by reason of its inherent nature or by the use to which it was devoted at the time of the loss." The two expressions have the same meaning.

The term "devoted" used in the second formula led to the question to what extent, for example, food supplies intended for the army and awaiting shipment from the English coast to the continental theater of war were included. This question was answered in the affirmative by the Umpire, who said that they were doubtless intended for military use. The choice of the term "devoted" instead of "designed" was explained by the fact that food supplies, for instance, which were stored by farmers in the western United States could not yet be considered "military material" before their delivery to the army authorities and prior to their shipment, since, though "designed" for military purposes, were not yet "devoted" thereto.

On the other hand, the question may be important how long the character of "military material" acquired by actual use continues in the case of objects not capable of military use. Such a continuance must be assumed until the object is again restored to its peaceful purpose.

2. The object must be used—or be intended for use—for acts of competent organs of those responsible for the conduct of the war. The decision of the Umpire cites the example of the Paris taxicabs which become war material as soon as they are used to transport troops. Similarly the example of rails used in a private enterprise for producing or transporting war material, in contrast to rails used by the army to transport troops to the front, is based upon this reasoning. Another example used in the deliberations of the Commission is the gun belonging to a *franc tireur* and which, regardless of whether it is subjected to destruction, does not become military by virtue of being used by its owner so long as he is not an organ of those responsible for the conduct of the war.

3. Finally, the object must be used for military purposes. To define this concept more precisely, the term "military effort" was first used. But the American Commissioner objected to it as possibly leading too far. Also the in part purely civilian activity in the United States, as, e.g., the administration of the railroads by the government, or the control of production signified in the final analysis a military effort, but the material used can hardly be termed "military material." To avoid this, he suggested "military operations," since it is primarily a question of intention in connection with the events of war.

This proposal led to a discussion of the question whether the term "military" was not too narrow and did not involve too much of an actual offensive intention. To avoid that, the expression "warlike" was considered, since a basic restriction of the term to offensive acts was not in the intention of the Commission. A careful test, however, showed that the two terms are synonymous. Hence the term "military" was allowed to stand, but it was stated that for the expression thus chosen, the question of offensive or defensive intention was irrelevant.

In harmony with this conception, the further expression "in furtherance of a military operation" is used in the decision and the automobile of the President of the United States is cited as becoming military material when used by the President along the front.

Thus too, musical instruments or sporting goods used only behind the front would be military material, since with their purpose of maintaining and promoting the morale of the troops they serve the military operation.

In accordance with criteria thus determined, an attempt was made, with the help of thirteen typical cases submitted to the Commission by the American agent, to delimit the term "naval material" for ships, as is done in the decision.

In the decision, the criterion of ownership as a criterion of the idea of "naval material"—posited by the American agent—is rejected.

In so far as the decision positively determines the criteria for the idea of "naval material," the points are formulated under I-III and V, while under IV and VI other criteria established by the German agent are rejected.

Decisions I-III grew out of the general points of view described above.

(a) Since actual use is theoretically the minus contained in the realized intention of use, the decision emphasized this intention in two-fold form. It speaks under I and II of the furtherance of a military operation, and also in I of the purpose directly in furtherance, etc.

How far-reaching this formulation was conceived by the Umpire is shown by the case of the oil tanker *Joseph Cudahy*, claim No. 547, used by the United States Department of War but returning empty to the United States and classified as war material.

The objection of the American Commissioner to this inclusion led to the discussion of the general question: how long the "naval material" character of a vessel not built or equipped for war persists.

Here the criterion of continuance of military character up to the time of restoration to its peaceful destination, used in the introductory remarks, was decisive. A ship used by the War Department is not naval material if and as long as it is on an intermediary trip; for instance, transporting tropical fruit, intended for the civilian population, from a Central American port to New York. But the return of a "naval material" ship in ballast to its port is radically different from such actual peaceful use. The American Commissioner, using as an analogy the treatment of a blockade-runner, wanted to regard the participation of the ship in the direct war operation, i.e., the transportation of war material to the army, as decisive, while the German side pointed to the difference which follows from the fact that in the case of blockade-runners there is a temporary relation between them and a very definite act, while in this case there is a permanent relation to the "military operations." It would be impossible to provision the troops and fleet in Europe if the eastbound vessel did not return. The arm which deals a blow is also in active operation while it prepares for the next blow.

(b) The use or purpose of use being thus treated as decisive, the criterion of government ownership—deviating from the view of the two agents, who in certain cases regarded such ownership definitive—was declared irrelevant. This applies also to the more restricted interpretation given by the German agent in the term "incorporated in the United States Navy."

The reason was found in the special character of the American Navy which is responsible also for the regulation of rivers and certain surveying projects. The materials for this work, e.g., dredges on the Mississippi, have no military character whatsoever. The American side desired their omission, but this proved only of theoretical significance. There was no objection to this since the criterion of government ownership in connection with every "purpose directly in furtherance of a military operation" was quite sufficient for including material serving in any way as war material.

With the rejection of the narrower interpretation of the American agent, the limitation of the term "naval material" to ships used for offensive purposes was denied by the definition given in I and II.

Only the general conception of "purpose directly in furtherance of a military operation" stands.

But—in keeping with the norms just mentioned—such a purpose is only relevant for the definition here in question when it is pursued by

the competent authorities, primarily the War and Navy Departments.

This thought is embodied in No. III of the Decisions: private use does not and can not make a ship "naval material."

In connection with the discussion of the view formulated under VI, the difference between the question whether a sinking was admissible in international law, and the question whether the sunken vessel was military or naval material must be treated in greater detail. It suffices here to emphasize that the distinctive criterion of use by official war organs leads to the elimination of use by private parties for private gain.

If then under IV, this connection with the official American war organs is denied in some cases, although the Shipping Board is an American organ connected with the conduct of the war, and although it is a question of ships requisitioned by it, yet this rests upon the special circumstances of fact under which these ships thus requisitioned remain reserved for private navigation and private trade as defined in detail by the decision.

For the rest, the decision of course does not absolutely exclude ships thus requisitioned from the category of naval material, but merely rejects the presumption for the military character of such ships as demanded by the German agent under C, so that it will depend upon the facts of the special case whether a ship thus requisitioned can be regarded as "naval material" or not.

(c) The variety of the cases submitted to the Commission made it imperative to define exactly the relation of the official war organ to the object used or to be used, i.e., in this case the ship. The decision under V serves this specific purpose.

In point of fact, it starts from the circumstances discussed in the decision itself. Pursuant thereto, the Shipping Board had the right on the one hand to assign the ships requisitioned by it to private persons—the owners or third parties—for further use (under the terms of the so-called time-charter), or on the other hand to transfer them, with a brief respite for the owner, to the War or Navy Department. With such transfer, the ship acquired the status of a public ship. Thereby the crew also passed into the service of the government, without, however, entering into an "official" relation to the government in the German sense. The "bare boat charter" usually coming into force for such cases of transfer merely provides in Section 2 that "the United States, at its sole expense, shall man, operate, victual and supply the

vessel.”⁶ The consequence was that the crews of ships thus requisitioned were usually civilian crews in whole or in part. The navigation of the ship in particular usually remained in the hands of a civilian master—as, e.g., in the case of the tanker *Cudahy*.

In category C, the American agent had tried to limit the quality of naval or military material for ships thus requisitioned to those ships which had an army or navy crew under military command.

This position was rejected in the decision under V, and the fact that the crew was hired and paid by the government was recognized as decisive in the sense that in the presence of the prerequisites mentioned in the decision the presumption of the military character of the ship was established.

The decision rested upon the consideration that it is not relevant whether the individual concrete act was performed by an official war organ, but that it was essential that the control over the actor must be fully in the hands of the war organ. The civilian master of the ship employed by the Navy or War Department may preserve his full freedom of decision in individual matters concerning the navigation of the ship. But in the totality of his acts, he always remains subject to the orders and control of the Department, and it depends only upon the latter, not upon the master, to what extent free decisions are to be left to him.

This reveals an essential difference for cases in which individual orders, either general or concrete, are officially given with the obligation of obedience, in the case of ships used in private service, the crews having been hired by the owners or charterers.

This applies, for instance, in the case of the numerous instructions on definite routes, also in the case of special instructions to ships en route, such as were undoubtedly given often during the war, especially in order to avoid submarines. Here the control affects only a single act and does not exclude the freedom of action either on the part of the master or on the part of the owner or charterer. Hence this control was not deemed sufficient to make a ship naval material (cf. Decision VI, *c* and *d*).

But possibly sufficient control could be seen in the mandate given the chartering War or Navy Department through a time-charter. Such a relation is considered essential by the Reparations Commission under certain circumstances, and in keeping with the character of the charter

⁶ The spirit of this control explains that the Government of the United States, in Sec. 4 of the charter, assumed full sea and war risk.

it gives the time-charterer greater power than a simple voyage charter does.

The question was discussed in connection with the steamer *Motano*, No. 551, wherein a time-charter on the part of the British Government was claimed by the German agent. But it was not decided because proof could not be adduced.

With the limitation of the extent of the relevancy of a control of the vessel by official war organs, that part of the decisions was touched which deviates from the German position as maintained by the agent.

It had appeared that all, or at least the majority of ships operating for gain and therefore per se not coming under the category of naval material, were armed with one or more cannon and usually had on board, over and above the regular civilian crew, a more or less numerous military crew for operating the cannon.

Such ships were designated by the German agent as military material.

The Commission did not concur in this view. It asserted that even if such armed protection, intended merely for protection, were in violation of international law,⁶ and would hence justify sinking in accordance with the rules of international law, this factor could not be decisive here because under Decision I Germany was responsible for every act, whether legal or not, and because for the answer to the question what was naval material, the legality of destruction or damage was not relevant.

The purpose of arming must be decisive, it was said, and only if this purpose were offensive would the purpose of "furtherance of military operations" have come into play. Had this been present, the qualification of the ships as regards naval material would have been modified.

But the detailed instructions given to the ships showed that the arming had no such purpose, and that the security of the ships—eventually to be sure by forcibly warding off submarine attacks—was considered the sole duty of those in charge of the ship.

Thus the purpose of furtherance of military operations and the military character of the ships, deduced solely from their being armed, were eliminated.

Similar points of view were decisive in the treatment of convoyed ships. Here too the question of the legality of the sinking was discarded. But for the rest, the Commission held that the character of a vessel per se undergoes no change if it is convoyed, and that the right of giving instructions and exercising a definite control, deduced from the

⁶ This was contested by the American side.

convoy, is not to be defined in such a way that this circumstance alone gives a ship military character.

Hence the view that convoy in itself makes a ship naval material was denied.

The last question presented to the Commission in connection with the problem of naval material, concerned the obligation of compensation for neutral vessels requisitioned by the American Government. The important points for answering this question do not touch the definition "military and naval material" but are derived from the idea of property declared to be entitled to protection in accordance with clause 9 of Annex 1 *sub* Article 244 of the Treaty of Versailles. Hence they are better discussed in connection with the questions concerning this idea and its delimitation.⁷

The points of the decision in question were again taken up later in defining the term "civilian population," to which the German liability for the damage of persons is restricted according to Article 232, Section 2.

As a test case for the differences of opinion arising in this connection, the claim of Christian Damson, captain of the steamer *Cudahy*, was chosen. The decision is published on page 243.

The *Cudahy* had been declared naval material in the decision discussed in the first part of this chapter.

It was intended for the exclusive use of the Army Transport Service of the United States, was used for transporting gasoline and naphtha for the front, and was sunk on the return voyage in ballast.

The captain of the *Cudahy* was the claimant Damson, who sued for compensation for injuries suffered at the time of the sinking, and for loss of property.

According to the findings of the Umpire, Damson was entrusted by the quartermaster general with the command of the vessel, was to wear a uniform in service, and belonged to the class of persons "accompanying or serving with the armies of the United States in the field" (p. 260), yet he did not have a military status.

Hence the American Commissioner affirmed his civilian status, emphasizing the fact that the *Cudahy* was not the property of the United States but rather a privately requisitioned ship. He also showed that according to American legislation, Damson had no military character.

The Umpire did not follow this reasoning. He refused to interpret

⁷ Cf. Chapter VIII.

the term "civilian population" as applying to that part of the population which, according to the special laws of the country concerned, can not be considered military. He took his definition exclusively from the treaties of Berlin and Versailles, and in his interpretation used essentially the same views as were used in interpreting "naval material."

Hence in determining the status of a person, it must be asked what purpose that person served at the time of the damage. If at the time he was "devoted" to the "furtherance of a military operation" (p. 263) he loses the legal protection accorded to the civilian population by the Treaty of Versailles.

It is the illustration of the Paris taxicab which is again used here. The driver of the cab transporting troops to the front loses his civilian status during the performance of this duty (p. 263).

This applies not only to the person, but also to the effects belonging to him in so far as they serve the personal use or purpose in the prosecution of which the person lost his civilian status.

Hence the loss of property suffered by Captain Damson does not entitle him to compensation.

Otherwise the library of an officer (fighting at the front) which was sunk en route from Cuba to New York. This case was decided by the Commission.

The Damson decision was supplemented later in another decision of the Umpire in re United States on behalf of Martin C. Young v. Germany, Docket No. 5805.

Young was a stoker aboard the *Lucia*. The ship was requisitioned by the Shipping Board and assigned to the War Department by time-charter. The crew, composed of civilians, was furnished and paid by the Shipping Board.

Hence the military control to which Damson was subject, did not exist in this case.

But the ship itself, according to the decision of the Umpire, was naval material because it took supplies to the fighting front for the War Department. This fact in itself was considered decisive. The crew of such a ship, serving the warlike effort of the United States, was not considered as a part of the civilian population. Hence the claim of the survivors of Young, who sank with the ship, was denied.

Different circumstances were presented to the Umpire for decision in the claim of a certain Arthur E. Hungerford (Vol. II, p. 766 of the English text). The claimant and with him a number of others were members of the Young Men's Christian Association, and were bound for

the French theater of war. It was their duty to maintain the morale of the troops—"a specific military function was assigned to the Y. M. C. A. Its duty was to assist in maintaining and promoting morale," page 769. For the sake of convenience, they were subjected to military control.

On April 28, 1918, the *Oronsa*, on which the claimant and his associates were transported to the theater of war, was sunk by a German mine in the Irish Channel. The personal property and equipment necessary for the performance of their duty, totaling \$50,000 in value, were lost. The claim was denied because "they had voluntarily segregated themselves 'from the civilian population' as that term is used in the Treaty of Berlin."

On the other hand, the claim was granted of a man who had reported for military service, had been subjected to a preliminary examination and was then ordered to go to Paris Island, South Carolina, for a final examination. En route he came to grief as the result of a German submarine attack (Rosenfield, Docket No. 7565).

CHAPTER X

CORPORATION CLAIMS

The question of the formal and material right of corporations to bring action led to a number of differences of opinion which, exceeding in part the provisions of the Treaty of Berlin, concern the discussion and application of general norms of international law.

I. The differences were first negatively limited and confined by the fact that on the basis of a unanimous decision of the Commission the right to bring action was denied to foreign corporations with a branch office in the United States—even in the case of claims originating in such branches.

The question was decided in connection with the claim of foreign insurance companies whose branch establishments in the United States had been admitted to the American insurance business. The claim called for compensation for damage growing out of the sinking of vessels during the war.¹

On the part of the companies, this claim was among other things motivated by the fact that through their admission to the American insurance business, and their fulfilment of the rules and obligations, they were in a position of equality with the American companies, and were therefore participants of their rights as well as of their duties.

Another argument was derived from the decisions of international tribunals and American courts, wherein it is asserted that a national of a foreign state who has settled permanently in another state, especially for commercial purposes, is to be regarded as a subject of this other state. Special emphasis was placed upon a decision of the noted Amer-

¹ The decision reads: "These causes having come before the Commission for decision, the American Agent and the German Agent having been heard, the causes having been finally submitted and due consideration having been had, the Commission finds that the claimants herein are foreign corporations, associations, partnerships or individuals in whose behalf the United States is not entitled to claim under the Treaty of Berlin, dated August 25, 1921, and that there is no financial obligation under that Treaty on the part of the Government of Germany to pay to the Government of the United States any amount on account of the losses complained." (Decision of September 13, 1924, in re United States on behalf of a number of alien insurance companies, Alliance Assurance Company, Ltd., *et al.*, Docket No. 3909-3937.)

ican jurist Story² which held that a foreign national becomes a subject of the country by virtue of permanent domicile there and that thereby he owes this country allegiance.³

The German side replied that the natural obligation that a foreign national who wishes to settle in another civilized country is subject to the laws of this other country, and consequently must fulfill also the special existing legal requirements, upon the fulfilment of which the conduct of a given business depends in the case of citizens, in case the foreign national desires to carry on business of that type, does not justify the deductions made by the present claimants. Apart from the fact that the special requirements as applied to insurance companies were laid down, not in the interest of the insurance companies, but in the interest of the insured and are hence not a privilege of such companies, it is not admissible as a matter of principle to make deductions from such domestic conditions with regard to the international status of a company.

Similarly, it was argued, the precedents cited are not applicable. Of the decisions referred to, a part deals with the well-known Anglo-American principle that nationals of a state may become alien enemies by having their domicile in the country of the enemy state during war-time, while the other part deals with cases in which persons have left the country of their nationality and by expatriation have dissolved the bonds to their old home state. If a relation of allegiance to the new home can develop therefrom, that is not a legal condition depending upon the volition of a party, but a legal consequence attached to very definite facts as they do not exist here.

Moreover, the branch establishment of a foreign company which in itself is an integral part of the home office, can not have different nationality from that of the home office.

And in examining the claims, the relation of the capital at work in the United States to the capital invested by the company outside of the United States must be considered.

² A member of the Supreme Court of the United States at the time of its eminent chief justice, John Marshall, in the first half of the 19th century.

³ *The Pizarro*, 2 Wheaton, 277 U.S. (1817), p. 244: "Indeed in the language of the law of nations, which is always to be consulted in the interpretation of treaties, a person domiciled in a country, and enjoying the protection of its sovereign, is deemed a subject of that country. He owes allegiance to the country, while he resides in it; temporary, indeed, if he has not, by birth or naturalization, contracted a permanent allegiance; but so fixed that, as to all other nations, he follows the character of that country, in war as well as in peace."

The Commission followed the German argumentation in so far as it opposed the right of the foreign companies to bring action, and took the view that certainly in the sense of the Treaty of Berlin (and of the Treaty of Versailles) such branch establishments can not be regarded as American "nationals."

II. With reference to the *Amerian* corporations themselves, i.e., corporations established under federal laws or laws of one of the forty-eight different states, the American agent took the position that such a corporation is definitely entitled to bring action. In accordance with the American theory, this is expressed in a purely formal way: The corporation has a standing before the Commission; the latter has jurisdiction over the claims of the corporations.

The consequence of this view is that if a claim lacks such standing, the jurisdiction of the Commission can not be motivated by agreement of the two agents, since the Commission is bound and limited in its powers by its charter, i.e., by the international agreement from which it derives its jurisdiction.

This consequence led to difficulties regarding the willingness of the German agent to admit certain corporation claims before the Commission, quite apart from the German position which contested the suability of the parties.

The American agent relied for his argument upon American practice, and particularly upon the definite principle laid down by the Supreme Court (*St. Louis and San Francisco Ry. Co. v. James*, 161 U. S. 545) that it was an indisputable legal presumption that a corporation established in accordance with the laws of one of the American states is composed of citizens of this state.⁴

He referred also to British practice, especially to the decision in the case of *Continental Tyre and Rubber Company (Great Britain), Ltd. v. Daimler Company, Ltd.* 1915 K. B. D. 904, wherein it is held that a corporation is an independent juridical person different from the shareholders, and hence can not be *technically* an English and *materially* a German company.⁵

The American side would admit an exception only in case a corpora-

⁴ "It must be regarded . . . as finally settled, by repeated decisions of this court, that, for the purpose of jurisdiction in the Federal courts, a state corporation is deemed to be indisputably composed of citizens of such State."

⁵ "It is a different person altogether from the subscribers to the memorandum or the shareholders on the register. . . . It can not be technically an English company and substantially a German company except by the use of inaccurate and misleading language."

tion was founded by aliens expressly for the purpose of securing the diplomatic protection of the United States, or of evading obligations to their home state arising from their nationality; also in case that and in so far as non-American shareholders of an American corporation have already been compensated otherwise for losses suffered by them.

The German agent maintained⁶ that the tenor of Section 5 of the Knox-Porter Resolution substantially gives only the individual American shareholders *as such* a claim to compensation.

The resolution provides that the German property shall be held until Germany has made adequate provision for the satisfaction of all claims "of all persons, wheresoever domiciled, who owe permanent allegiance to the United States of America and who have suffered . . . loss, damage, or injury to their . . . property, directly or indirectly, whether through the ownership of shares of stock in . . . American, or other corporations."

It was agreed that according to the German text, which must be regarded as being of equal value with the English text, the term "person" can mean only natural persons, especially since the "*Wohnsitz*" (domicile) of such persons is mentioned, and that according to German law only a physical person has a "*Wohnsitz*"; furthermore, that according to German conceptions the relation of a juridical person to the state can not be described as a relation of—permanent—"allegiance," and that therefore under the provisions of the Treaty of Berlin the right to bring action is denied to corporations as such.

Nevertheless, as has been noted, the German agent was prepared, for reasons of expediency, to entertain the claims made by the corporations as such, if the decisions possibly rendered in their favor were limited to that part of the shares which was uninterruptedly in the possession of

⁶ So far as the suability of American corporations for pressing private debts is concerned (as they come under the treaties of Berlin and Versailles), the German side refrained from opposing, so that this chapter concerns only claims made on an exclusively public law basis against Germany.

The Commission agreed that with regard to rights of an American corporation, in so far as *private law* claims are involved, the German objections derived from the nationality of its shareholders do not hold.

But the legal status seemed very doubtful where such corporations relied for their private law claims upon the public law guarantee of Germany for private debts. Here an eventual application of the principles treated in this chapter in relation to the German Reich itself did not seem out of the question.

This question, discussed in the Commission, was not decided because the German side refrained from pressing its objections.

American citizens, from the time of the loss to the time when the claim was pressed.

In further motivation of the German view, the question of the nationality of juridical persons, disputed in European international law, was discussed and in conjunction therewith, it was shown that the fiction of the juridical person of a corporation, especially according to Anglo-American law, does not exclude a consideration of the persons of the shareholders and their nationality. This assertion was motivated and substantiated by extensive material comprising decisions and measures originating during such times, especially during the World War.

The Commission for its part rejected the German view.

It based its deliberations upon the fact that even if the Knox-Porter Resolution⁷ has the meaning given to it by the German side, the question is not decided thereby, since in Article 1 of the Treaty of Berlin and in Section 2 of the resolution, the United States reserved all rights accruing to it from the Treaty of Versailles, and obviously did not wish to prejudice its other rights by the formulation of Section 5 of this resolution.

Hence the Commission resorted to those provisions of the Treaty of Versailles wherein the financial claims against Germany are formulated, and unanimously⁸ came to the conclusion, on the basis of the interpretation of Articles 296 and 297 and of the provisions of clause 9 of Annex 1 *sub* Article 244, and of paragraph 4 of Annex 1 to Article 298, that in the sense of the Treaty of Versailles, the word "national" includes also corporations, and that therefore a corporation organized according to American law has standing before the Commission technically and *prima facie*.⁹

⁷ Both the American Commissioner and the Umpire interpreted the Knox-Porter Resolution differently from the German Commissioner, in that they held that its text includes corporations.

⁸ Cf. the detailed motivation in the vote of the American Commissioner.

⁹ For a purely American formulation, to be sure, the term "national" can not be used because in America the term "citizen" is usually employed.

Cf. Convention for Payment of Sums due by France to Citizens of the United States, April 30, 1803.

Claims Convention between the United States and Mexico, July 4, 1868.

Treaty of Washington between the United States and Great Britain, May 8, 1871.

Claims Convention United States-Venezuela, Jan. 19, 1892.

Claims Convention between the United States and Chile, Aug. 7, 1892.

Treaty of Peace between the United States and Spain, Dec. 10, 1898.

With this decision, the Commission was confronted by a series of problems which had not been discussed in the memoranda of the two agents, and could not be treated by the Commission in view of the position of the German agent.

III. First of all, the question arose how this right of the corporation as such was related to the compensation claim granted to the individual shareholder by the Knox-Porter Resolution.¹⁰

So far as the interpretation of the conditions of the treaty is concerned, such a claim of the individual shareholder and its legal construction could hardly attract a wider interest. But apparently the inclusion, in the treaty, of this special right to bring action is to be ascribed to the general view advocated at the time by the American Government that such claims are entitled to protection as a matter of principle.¹¹

That this is actually the American view appears clearly from the provisions of the Claims Convention of September 8, 1923, between the United States and Mexico which in Article I submits also the claims of individual American citizens arising from participation in a "corporation, company, association or partnership" to the decision of the Commission.

The passage reads: "all claims for losses or damages suffered by citizens of either country by reason of losses or damages suffered by any corporation, company, association or partnership in which such citizens have or have had a substantial and bona fide interest, provided an allotment to the claimant by the corporation, company, association or partnership of his proportion of the loss or damage suffered is presented by the claimant to the Commission hereinafter referred to."

The question, how this loss suffered by an individual by reason of participation in a corporation shall be computed and proved, has apparently been settled neither by judicial decision nor by general principles. The provision of the Convention between the United States and Mexico is limited to the condition: "provided an allotment to the claimant by the corporation, company, association or partner-

Convention between United States, Germany, and Great Britain, relating to the settlement of Samoan claims, Nov. 7, 1899.

Treaty between United States and Certain Powers for the Arbitration of Pecuniary Claims, Jan. 30, 1902.

¹⁰ Sec. 5 provides for claims for losses suffered by persons through the possession of shares of German, Austro-Hungarian, American or other corporations.

¹¹ Cf. also Chapter VIII.

ship of his proportion of the loss or damage suffered is presented by the claimant to the Commission." But this formulation does not clear the question, especially from the legal point of view. So it is quite conceivable that the damage suffered by a shareholder by reason of losses suffered by the corporation need not be identical with a fraction of the loss suffered by the company, this fraction corresponding to the ratio of his share to the total capital of the company; that, for instance, the extent of the obligations existing for the company may bring it about that the indemnity owing to the company is absorbed in whole or in part by payments to creditors of the company, so that the loss imposed upon the company really does not affect the partners but the creditors of the company. It is also conceivable that despite the loss suffered by the company, the commercial or market value of the individual share is not diminished. Hence it is by no means clear how the individual shareholder will be able to compute his share of loss.

From the internal American point of view, such a claim of the individual shareholder is explained by the close connection of the American shareholder and the corporation with which he is associated. This relation and its effect which penetrate the corporation can not be better illustrated than by reference to the argument of the Supreme Court, Decision in *re St. Louis and San Francisco Railway Company v. James*, 161 U. S. 545. In the decision it is a question of the allegiance of the plaintiff corporation to the state according to the laws of which it is established and wherein it has its seat. But the decision affirms the allegiance not on the basis of this allegiance, but resorts to a long—*ad hoc*—established, irrefutable, legal presumption to the effect that the shareholder of such a corporation must be regarded as a national of the state in question.

If occasionally American law grants the shareholders of a corporation, or a majority of them, the right to press claims belonging to the corporation, this is based upon the same mode of reasoning.

The same is true of the investigation concerning the nationality of a shareholder, such as is required in the questionnaire prepared by the Department of State¹² prior to admitting the claim of a corporation, which will be further discussed below.

¹² Reprinted among the decisions of the Commission.

Cf. also Decision VII, p. 325. There the Umpire holds that the Knox-Porter Resolution quite consciously included American corporations among those in which participation may lead to indirect damage, so as to protect in this way American minority interests in corporations which are externally American but are controlled by an alien

But from the point of view of international law, such a special claim of the individual shareholder meets with serious objections. Even if the shareholder of a non-American corporation domiciled abroad is granted a claim for damage inflicted upon him as the result of an act directed against the corporation, the principle governing the intercourse of the nations, to wit, that it must be the nation which has suffered an injustice in the person of a national, becomes merely a meaningless formula. It is replaced by the other principle clearly recognizable in the specifically American development of international law, that not the direction of the reparable act against the person (or thing) of an alien national, but the simple fact of the loss caused to an American by the act is decisive for the international claim.

This theory of loss and its significance is treated in detail in Chapter VIII, to which the reader is referred.

In this place we merely note that this very far-reaching claim to protection is not in harmony, historically and theoretically, with the development of international law thus far.

Early in the history of the United States, the Supreme Court through its eminent Justice Story (mentioned above) had expressed the principle that: "whenever a person is *bonâ fide* domiciled in a particular country, the character of the country irresistibly attaches to him"—*Livingston v. Maryland Insurance Company*, 7 Cranch 506 (1813); and in agreement therewith, the same principle was applied to objects with regard to which, again in the words of Justice Story, the court stated: "that the property of a house of trade, established in the enemy's country, is condemnable, as prize, whatever may be the personal domicil of the partners" (in *The Friendschaft*, 4 Wheaton 105).

The principle recognized thereby, that whosoever entrusts his person or his interests to a foreign country also assumes the risk connected therewith, has been utilized in numerous decisions, e.g., *Lamar's Ex. v. Browne*, 92 U. S. 187, 194, and *Young v. United States*, 97 U. S. 39, 60, and particularly in the cases growing out of the Spanish-American War. Thus in *re Juragua Iron Company, Ltd. v. United States*, 212

minority, because in conjunction with the former custom of the Department of State, the American Government might refuse to press the claims of such corporations.

In such cases American citizens may press their claims through the American Government in their capacity as shareholders, or as participants otherwise.

This reasoning confirms the close connection between the international standing of the corporation and the nationality of its shareholders according to the American interpretation.

U. S. 297, the plaintiff, an American corporation incorporated in Pennsylvania but domiciled in Cuba, was deemed "enemy . . . with respect of its property found and then used in that country" (i.e., Cuba).¹³

The same principle was stated as follows by Chancellor Kent in his *Commentaries on American Law* (Vol. 1, p. 74—14th edition):

"The position is a clear one, that if a person goes into a foreign country, and engages in trade there, he is, by the law of nations, to be considered a merchant of that country."

But it is incompatible with this if for the interests standing behind such a natural or juridical person domiciled abroad, which as such are hardly recognizable in their individuality and nationality, a national protection is claimed in international law because the act causing the damage had economic consequences for such interests belonging to another nationality.

Such a claim for protection must seem all the more doubtful, since it would lead to endless complications if pressed by all nations—a consideration which in the earlier periods of its development seems to have prompted the United States to refuse to espouse such claims.¹⁴

Before the Commission the claim of the individual shareholder was decided only in the relatively simple form that closed and controlling American groups claimed their share for damages which were suffered, for instance, by companies established under Belgian laws and domiciled in Belgium. Such claims were expressly recognized as coming under Germany's obligation to render compensation, this being the case not only by virtue of the text of the Knox-Porter Resolution but also by virtue of the diplomatic negotiations preceding the conclusion of the Agreement of August 1922. Since, in the cases presented to the Commission, the possibility of overburdening the Belgian companies concerned with debt was not involved, the proportional damage suffered by the American shareholders was simply fixed at a given quota of the total loss.

For the rest the American agent, as we have noted, conceded that wherever the corporation itself was compensated for damage suffered by it, the right of the individual shareholder to compensation is not recognized—a position which solves practically the problem of the simultaneous existence of claims by corporations and their shareholders but by no means removes the juridical difficulties.

¹³ Cf. also *Herrera v. United States*, 222 U. S. 558.

¹⁴ Cf. note 14 of Chapter VIII (attitude of the United States in regard to the steamer *Antioquia*).

The question of the material content of these indirect rights of the shareholder of a non-American corporation in its basic formulation is given detailed treatment in the decisions (discussed in Chapter VIII, page 78) United States of America on behalf of Standard Oil Company of New York, Docket 5323, 5434, 5469, volume II, pages 660 *et seq.* of the English text. The ships for which compensation was demanded in those cases, belonged to British companies whose shareholders of a company may have more far-reaching rights than the company itself—page 663—a question which has more general significance from the American point of view. For the protection of the shareholder of an alien company, according to the American theory, is based upon very general considerations of principle.

The question is affirmed, not expressly but implicitly, by the decision of the Umpire in the three cases mentioned.

Doubtless the British companies no longer have claims against Germany, for the British claims are absorbed by the proceedings before the Reparations Commission. Yet the decision assumes that Germany would be liable if it could be proved that the company was so damaged by a German act that American shareholders suffered damage therefrom for which the company did not receive compensation: "if through Germany's act the property of a British corporation has been damaged or destroyed resulting in an American national suffering damage through his ownership of shares therein, then under the Treaty of Berlin Germany is obligated to make compensation to the extent of the damage so suffered by him."

The very far-reaching consequence is that if a ship belonging to a neutral company has been rightfully sunk, so that this neutral company has no claims, the American shareholder is nevertheless entitled to compensation for his share of damage within the limits of the provisions of the treaties of Berlin and Versailles.

Only in its amount does the claim depend upon the amount of the loss suffered by the alien company through the act.

"In determining the damage, if any, suffered by the British corporations . . . the status of these ships must be examined."

IV. Far more important was the discussion of the extent of the material right of the American corporations as such to bring action.

The American Commission contended that every company incorporated under American laws, regardless of the nationality of its shareholders, is substantially entitled to bring action, i.e., for the entire damage suffered by it.

The question whether and to what extent the seat of such a company may influence its nationality was not discussed, since both the American Commissioner and the American agent considered the fact of the establishment of a company under American laws as being alone decisive.

The individual cases presented to the Commission furnished no occasion for discussing this question.

The difference of opinion centered upon another question: to wit, the significance and influence of the nationality of the shareholder upon the nationality of the corporation itself, or in other words, upon the applicability of the principle of control.

Closely connected with this was the difference of opinion on the treatment of non-American minority groups.

With good and important reasons, the theory of control has been impugned and rejected by German writers as the basis for determining the nationality of a juridical person (see Isay, *op. cit.*, and also Klansing Jur. W. 1924, p. 1402). It is also incompatible with the German conception of the legal status of the shareholder, although this does not apply to the legal status of the shareholders of a German limited company.

But if it is true that the laws of the state to which the corporation belongs are decisive in determining its nationality, the theory of control can not be disregarded. For in the United States there are indications in its favor, though recent developments subordinate it to other tendencies.

Thus the United States Department of State has issued general instructions, revised in January 1920, which set up a number of norms for establishing and clarifying the question of the nationality of individuals and corporations. The second section of these instructions deals with the nationality of joint stock companies or corporations as claimants. In the introductory note, it is said that the nationality must be determined and that for this reason the questions then formulated must be answered. And these questions deal with the ratio of the amount of shares held by Americans to the amount in alien possession, and call for the necessary data in the light of the principles applicable to the nationality of the individuals, i.e., both for the time of the origin of the damage and for the time of the filing of the claim with the Department of State.

It follows that the American Government considers the ratio of the shares held by Americans to that of shares held by aliens important (cf. also Borchard, pages 621-2).

According to the view of the American Commissioner, these are purely internal measures not affecting the right of the American Government to afford diplomatic protection to the claim of every corporation incorporate under American laws, so that it is left to the discretion of the American Government to decide for which corporations, and to what extent, claims should be pressed.

But this is opposed by the fact that in the cases presented to the Commission the Government refrained in general from making a preliminary examination of the technical and substantial justification of the claims, and from deciding whether the claims should be pressed or not. The very great number of cases presented to the Commission (over 13,000) rendered such an examination impossible without jeopardizing the purpose of the Commission.

This position opposed by the fact that the text of this instruction does not express such an attitude but on the contrary, by reference to the necessity of determining the nationality of the corporation, justifies the view that—since the nationality of a corporation is incontestably the basis for pressing an international claim as such—the nationality of the shareholder is here essential for the purpose in question. This assumption is all the more justified since we may assume, in view of the position of the American Government, that it is not inclined to limit the claims of its nationals without sufficient cause, and that therefore this control can be explained only by the interpretation, in international law, of the nationality of the corporation as construed by the American Government.¹⁵

This general attitude of the American Government was bound to have a more important effect since it coincided in general with the principles applied by the other enemy powers during the war.

Hence the German Commissioner took the position¹⁶ that not only under the general American view on the legal requirements of the substantial right of a corporation to bring suit, but especially under the conditions created by the Treaty of Berlin, an American corporation must be denied a claim for compensation if it is controlled by aliens or operated principally with foreign capital.

¹⁵ This reasoning does not clash with the decision of the Supreme Court of January 5, 1925, in *re Behn, Meyer & Company, Ltd. v. Miller*, as alien property custodian.

This decision is based upon the text of the Enemy Act and states that the property of a corporation established under British laws, the shares of which were in German hands, could not be sequestered by the American custodian in accordance with the provisions of this law.

¹⁶ For the details we refer to the German vote published among the decisions of the Commission.

A treaty which aims to remove the consequences of a war, and especially to regulate the obligations for compensation developing therefrom, as the treaties of Versailles and Berlin do, can only be judged and interpreted according to the same principles as were applied in the war which preceded.

Special reference was made to Article 297 b, whereby the liquidation of companies controlled by Germans is reserved to the powers beyond the period of war. Recognition of such companies as being American merely because they were incorporated under American laws would in itself be inconsistent, and might finally lead to the compensation, by awards, of German nationals who control American corporations, a thing which was surely not intended by the contracting powers.

In close economic and juridical connection with this view was the further German contention that alien share-minorities must be considered in determining the amount of compensation—decreasing the obligation.

Herein the German side merely reiterated a view which the American Government itself had maintained in connection with the compensation for losses arising from the Spanish-American War. After the Spanish war, the American Government—in the treaty concluded with Spain—had undertaken to compensate American citizens out of its own resources. Before the (exclusively American) Commission, the American agent expressed the view “that only the American stockholders in American corporations could recover.” It was not clear why that which seemed justified to the American Government where it was a question of compensating its own nationals, should not hold when the obligation was to be fulfilled from the resources of another state.

To be sure, it was not possible to make a deduction in the case of every corporation claim for every share which at the time in question was not American. But for closed groups of alien shareholders, a deduction could well be made in accordance with this principle. It was the duty of the Commission to determine in individual cases whether and to what extent such deduction was justified.

Hence the German Commissioner, in agreement with the decision rendered at the time by the Commission established on the basis of the Spanish-American treaty, proposed that such cases be reserved for special treatment by the Commission.

Thereby the Germans emphasized the connection, in the case of American corporation claims, between the claim of the corporation and the nature of the capital represented therein. This connection led to

various results, depending upon whether the majority of the capital and the control of the company, respectively, were in American hands or not.

In the former case, according to the German argument, the claim was bound to fail, certainly before the Commission, since such companies, though incorporated under American laws, lacked the substantial right to compensation in respect of the nationality of its shareholders.

In the latter case, American nationality and with it the substantial right to bring suit were present, but the amount of the claim was dependent upon the extent of the participation of American capital.

The obvious thought, emphasized by the American Commissioner, that this construction is bound to fail as a result of the impossibility of computing the share accruing to the alien minority, is answered by the fact that the very assumption of the possibility of such computation is the preliminary condition for the right to bring suit granted to the individual American shareholder in the Treaty of Berlin, and that it is not clear why a computation of damage expressly sanctioned in favor of American citizens and to the prejudice of Germany, can not be applied also when it happens to be in favor of Germany but to the prejudice of non-American, i.e., foreign capital.

Beside this objection, which is conceivable from the principle of computation, there was another objection arising from the construction of the claimant company itself. It was emphasized by the American agent and held that a corporation to which a sum is awarded can not prevent any of its shareholders from deriving the benefits from these values.

In reply thereto, attention was called to the method used by French legislation for removing this objection, and to the fact that this difficulty can not be decisive either in practice or in law, since in the face of it the American Government itself took the position before the Spanish-American Commission which was now taken by the German side.

The Umpire, to whom the decision was left after the two Commissioners had disagreed, refrained from stating his opinion in a formal decision.

But the rules laid down by him and the treatment of the corporation claims as a result thereof, reveal his point of view.

Dissenting from the opinion of the American Commissioner, he approved as a matter of principle the investigation of the substantial interests of the corporation as to the question of how far they possess American nationality.

Dissenting from the view of the German Commissioner, whereby claims of American corporations controlled by non-Americans would be entirely denied, he granted a claim to the American corporation in the amount of the American interest involved, in case it were the interest of an American minority.

If in the investigation there were found determinable foreign minorities in an American corporation with an American majority, the portion of compensation devolving upon it was to be deducted.¹⁷ If on the other hand there were found determinable American minorities in the case of American corporations controlled by aliens, the portion of compensation devolving upon them was to be awarded.

The majorities or minorities existing in a corporation at the time of the origin of the damage, and at the time of the coming into force of the Treaty of Berlin¹⁸ were to be decisive.

The distribution of the amounts thus awarded among those materially entitled thereto was left to the American Government and to the corporations, respectively.

It is remarkable that emphasis was also placed upon the proof of the solvency of the claimant company in this connection. The reason was the beneficiary interest of the American owners of securities, whose right as creditors was involved, in case the resources of the corporation in question were not sufficient to cover the securities. The award of compensation in favor of such American creditors did not become practical. The guiding principles given by the Umpire for the treatment of the corporation claims justify the assumption that his decision would have been in favor of such an award. The purely obligatory relation of such creditor rights to the debtor corporation and to the claims pressed by it would not have opposed because the fact of the economic loss suffered by Americans was always considered decisive.¹⁹

The reasoning which led the Umpire to these conclusions and which was used in the deliberations of the Commission can not be given in detail. But it may be said that it was based upon the special provisions of the treaties of Versailles and Berlin and in conjunction with the view of the German Commissioner, emphasized the liquidation of the

¹⁷ Thus the Umpire in *re United States of America on behalf of the Gans Steamship Line v. Germany*, Docket No. 6625, Vol. II, pp. 737 *et seq.*, deducted 20% from the compensation in consideration of the German capital represented in the claimant corporation.

¹⁸ Cf. Administrative Decision V.

¹⁹ Cf. Chapter VIII.

war damages as proposed by those provisions. The treatment of similar claims by the British, French and Belgian Governments which in like manner "lifted the veil of the corporations" and considered only the material interests of their own nationals behind the corporations,²⁰ was not without influence. But the opinion of the Umpire was clearly expressed in connection with his decision in *re Henry Cachard and H. Herman Harjes, Executors of the Estate of Medora de Mores v. Germany*, of October 30, 1925, Docket No. 603.

The decision denies the claim made by American executors of the estate of an American woman, whose heirs were exclusively French nationals, because "the entire beneficial interest in the claim is in French nationals." For its motivation, the decision also relies upon the practice in connection with the corporation claims, and shows that the Umpire approves the principle manifested in these decisions, that in the case of a corporation, the nationality of the interest behind it is decisive, and that he applies it analogously to the nationality of the interest behind the estate which according to American law is technically an independent interest.

"The Mixed Arbitral Tribunals to which France is a party have uniformly held that the nationality of the claim must be determined by the nationality of the beneficiary and have carried this rule to the extent of applying it to corporations, rejecting the juridical theory of the impenetrability of corporations for the purpose of determining the true nationality encased in the corporate shell."

In a note (3) the decisions serving to justify this view are summed up as follows:

Decision of Franco-German Mixed Arbitral Tribunal in the case of *Société du Chemin de fer de Damas-Hamah c. la Compagnie du Chemin de fer de Bagdad*, I Dec. M. A. T., pages 401-407. In this case both the claimant and defendant were by their incorporation Turkish. The jurisdiction of the tribunal was challenged by both the defendant company and the German Agent because the claimant company was not French and the defendant company was not German. The tribunal held that as the claimant company was French-controlled and the defendant company was German-controlled the tribunal had jurisdiction. In the course of the opinion it was said: "Moreover, it is thoroughly in accord with the spirit of the Peace Treaty to pay less attention to questions purely formal than to palpable economic realities; consequently, when the nationality of a corporation is to be determined more

²⁰ Cf. the remarks on the measures of these states in the vote of the German Commissioner.

weight must be given to the interests represented therein than to the outward appearance which may conceal such interests. In the present case the circumstance that both corporations are described as Ottoman (Turkish) and that their charter seat is in Turkey must be considered as purely formal and not of decisive importance.

We will not be mistaken if, in conjunction with the fact that the rules laid down by the Umpire for the treatment of the corporation claims agree with the principles stated in these decisions, we find in this summary the basis—or one of the bases—for the position taken by the Umpire with regard to this much disputed question.

APPENDIXES

A—TREATY BETWEEN THE UNITED STATES AND GERMANY¹

The United States of America and Germany:

Considering that the United States, acting in conjunction with its co-belligerents, entered into an Armistice with Germany on November 11, 1918, in order that a Treaty of Peace might be concluded;

Considering that the Treaty of Versailles was signed on June 28, 1919, and came into force according to the terms of its Article 440, but has not been ratified by the United States;

Considering that the Congress of the United States passed a Joint Resolution, approved by the President July 2, 1921, which reads in part as follows:

Resolved by the Senate and House of Representatives of the United States of America in Congress Assembled, That the state of war declared to exist between the Imperial German Government and the United States of America by the joint resolution of Congress approved April 6, 1917, is hereby declared at an end.

SECTION 2. That in making this declaration, and as a part of it, there are expressly reserved to the United States of America and its nationals any and all rights, privileges, indemnities, reparations, or advantages, together with the right to enforce the same, to which it or they have become entitled under the terms of the armistice signed November 11, 1918, or any extensions or modifications thereof; or which were acquired by or are in the possession of the United States of America by reason of its participation in the war or to which its nationals have thereby become rightfully entitled; or which under the Treaty of Versailles, have been stipulated for its or their benefit; or to which it is entitled as one of the principal allied and associated powers; or to which it is entitled by virtue of any Act or Acts of Congress; or otherwise.

SECTION 5. All property of the Imperial German Government, or its successor or successors, and of all German nationals, which was, on April 6, 1917, in or has since that date come into the possession or under control of, or has been the subject of a demand by the United States of America or of any of its officers, agents, or employees, from any source or by any agency whatsoever, and all property of the Imperial and Royal Austro-Hungarian Government, or its successor or successors, and of all Austro-Hungarian nationals which was on December 7, 1917, in or has since that date

¹ U. S. Treaty Series, No. 568.

come into the possession or under control of, or has been the subject of a demand by the United States of America or any of its officers, agents or employees, from any source or by any agency whatsoever, shall be retained by the United States of America and no disposition thereof made, except as shall have been heretofore or specifically hereafter shall be provided by law until such time as the Imperial German Government and the Imperial and Royal Austro-Hungarian Government, or their successor or successors, shall have respectively made suitable provision for the satisfaction of all claims against said Governments respectively, of all persons, wheresoever domiciled, who owe permanent allegiance to the United States of America and who have suffered, through the acts of the Imperial German Government, or its agents, or the Imperial and Royal Austro-Hungarian Government, or its agents, since July 31, 1914, loss, damage, or injury to their persons or property, directly or indirectly, whether through the ownership of shares of stock in German, Austro-Hungarian, American, or other corporations, or in consequence of hostilities or of any operations of war, or otherwise, and also shall have granted to persons owing permanent allegiance to the United States of America most-favored-nation treatment, whether the same be national or otherwise, in all matters affecting residence, business, profession, trade, navigation, commerce and industrial property rights, and until the Imperial German Government and the Imperial and Royal Austro-Hungarian Government, or their successor or successors, shall have respectively confirmed to the United States of America all fines, forfeitures, penalties, and seizures imposed or made by the United States of America during the war, whether in respect to the property of the Imperial German Government or German nationals or the Imperial and Royal Austro-Hungarian Government or Austro-Hungarian nationals, and shall have waived any and all pecuniary claims against the United States of America.

Being desirous of restoring the friendly relations existing between the two Nations prior to the outbreak of the war:

Have for that purpose appointed their plenipotentiaries:

The President of the United States of America: ELLIS LORING DRESEL, Commissioner of the United States of America to Germany, and

The President of the German Empire: DR. FRIEDRICH ROSEN, Minister for Foreign Affairs,

Who, having communicated their full powers, found to be in good and due form, have agreed as follows:

ARTICLE I

Germany undertakes to accord to the United States, and the United States shall have and enjoy, all the rights, privileges, indemnities,

reparations or advantages specified in the aforesaid Joint Resolution of the Congress of the United States of July 2, 1921, including all the rights and advantages stipulated for the benefit of the United States in the Treaty of Versailles which the United States shall fully enjoy notwithstanding the fact that such Treaty has not been ratified by the United States.

ARTICLE II

With a view to defining more particularly the obligations of Germany under the foregoing Article with respect to certain provisions in the Treaty of Versailles, it is understood and agreed between the High Contracting Parties:

(1) That the rights and advantages stipulated in that Treaty for the benefit of the United States, which it is intended the United States shall have and enjoy, are those defined in Section I, of Part IV, and Parts V, VI, VIII, IX, X, XI, XII, XIV, and XV.

The United States in availing itself of the rights and advantages stipulated in the provisions of that Treaty mentioned in this paragraph will do so in a manner consistent with the rights accorded to Germany under such provisions.

(2) That the United States shall not be bound by the provisions of Part I of that Treaty, nor by any provisions of that Treaty including those mentioned in Paragraph (1) of this Article, which relate to the Covenant of the League of Nations, nor shall the United States be bound by any action taken by the League of Nations, or by the Council or by the Assembly thereof, unless the United States shall expressly give its assent to such action.

(3) That the United States assumes no obligations under or with respect to the provisions of Part II, Part III, Sections 2 to 8 inclusive of Part IV, and Part XIII of that Treaty.

(4) That, while the United States is privileged to participate in the Reparation Commission, according to the terms of Part VIII of that Treaty, and in any other Commission established under the Treaty or under any agreement supplemental thereto, the United States is not bound to participate in any such commission unless it shall elect to do so.

(5) That the periods of time to which reference is made in Article 440 of the Treaty of Versailles shall run, with respect to any act or election on the part of the United States, from the date of the coming into force of the present Treaty.

ARTICLE III

The present Treaty shall be ratified in accordance with the constitutional forms of the High Contracting Parties and shall take effect immediately on the exchange of ratifications which shall take place as soon as possible at Berlin.

In Witness Whereof, the respective plenipotentiaries have signed this Treaty and have hereunto affixed their seals.

Done in duplicate in Berlin this twenty-fifth day of August 1921.

(SEAL)

ELLIS LORING DRESEL

(SEAL)

ROSEN

B—AGREEMENT ¹

The United States of America and Germany, being desirous of determining the amount to be paid by Germany in satisfaction of Germany's financial obligations under the Treaty concluded by the two Governments on August 25, 1921, which secures to the United States and its nationals rights specified under a resolution of the Congress of the United States of July 2, 1921, including rights under the Treaty of Versailles, have resolved to submit the questions for decision to a mixed commission and have appointed as their plenipotentiaries for the purpose of concluding the following agreement:

The President of the United States of America: ALANSON B. HOUGHTON, the Ambassador Extraordinary and Plenipotentiary of the United States of America to Germany, and

The President of the German Empire: DR. WIRTH, Chancellor of the German Empire,

Who, having communicated their full powers, found to be in good and due form, have agreed as follows:

ARTICLE I

The commission shall pass upon the following categories of claims which are more particularly defined in the treaty of August 25, 1921, and in the Treaty of Versailles:

1. Claims of American citizens, arising since July 31, 1914, in respect of damage to, or seizure of, their property, rights and interests, including any company or association in which they are interested, within German territory as it existed on August 1, 1914;

2. Other claims for loss or damage to which the United States or its nationals have been subjected with respect to injuries to persons, or to property, rights and interests, including any company or association

¹ U. S. Treaty Series, No. 665.

in which American nationals are interested, since July 31, 1914, as a consequence of the war;

3. Debts owing to American citizens by the German Government or by German nationals.

ARTICLE II

The Government of the United States and the Government of Germany shall each appoint one commissioner. The two Governments shall by agreement select an umpire to decide upon any cases concerning which the commissioners may disagree, or upon any points of difference that may arise in the course of their proceedings. Should the umpire or any of the commissioners die or retire, or be unable for any reason to discharge his functions, the same procedure shall be followed for filling the vacancy as was followed in appointing him.

ARTICLE III

The commissioners shall meet at Washington within two months after the coming into force of the present agreement. They may fix the time and the place of their subsequent meetings according to convenience.

ARTICLE IV

The commissioners shall keep an accurate record of the questions and cases submitted and correct minutes of their proceedings. To this end each of the Governments may appoint a secretary, and these secretaries shall act together as joint secretaries of the commission and shall be subject to its direction.

The commission may also appoint and employ any other necessary officer or officers to assist in the performance of its duties. The compensation to be paid to any such officer or officers shall be subject to the approval of the two Governments.

ARTICLE V

Each Government shall pay its own expenses, including compensation of its own commissioner, agent, or counsel. All other expenses which by their nature are a charge on both Governments, including the honorarium of the umpire, shall be borne by the two Governments in equal moieties.

ARTICLE VI

The two Governments may designate agents and counsel who may present oral or written arguments to the commission.

The commission shall receive and consider all written statements or documents which may be presented to it by or on behalf of the respective Governments in support of or in answer to any claim.

The decisions of the commission and those of the umpire (in case there may be any) shall be accepted as final and binding upon the two Governments.

ARTICLE VII

The present agreement shall come into force on the date of its signature.

In faith whereof, the above named plenipotentiaries have signed the present agreement and have hereunto affixed their seals.

Done in duplicate at Berlin this tenth day of August 1922.

(SEAL)

ALANSON B. HOUGHTON

(SEAL)

WIRTH

C—LIST OF THE MEMORANDA OF THE GERMAN AGENT ON THE TREATMENT OF BASIC QUESTIONS

In re Coronet Phosphate Co., Docket No. 1, on the "real" or "personal" liability of Germany for pre-war debts.

In re Pittsburgh Plate Glass Co., Docket No. 2, on German liability for damages in territory occupied by the German troops.

In re G. A. Carden and B. F. Yoakum, owners of the schooner *Lyman M. Law*, Docket No. 9, on the extent of German liability in the American neutrality zone.

As a supplement thereto the summary "On naval warfare and the law of nations in the recent war."

In re M. Hopkins, Docket No. 4, on liability as a result of the sinking of the *Lusitania*.

In re U. S. Steel Products Co., Docket No. 20, on the liability for war risk insurance premiums.

On the liability for claims of insurance companies for damages resulting from naval warfare.

In re Provident Mutual Life Insurance Co., and others.

On the liability for "war losses" of the life insurance companies (2 memoranda).

On the interpretation of the term "Naval and Military Works or Materials" (Sec. 9 of Annex 1 *sub* Art. 244).

On the appraisal of sunken vessels.

On the right of American corporations to bring action before the Commission (2 memoranda).

On the right of foreign underwriting companies admitted in the United States to bring action.

On the rights of the charterers to receive compensation.

On the right of associations whose members joined the association after the expiration of the time-limit set for filing claims to bring action (Decision VIII).

On the burden of evidence.

On the term "civilian population."

On the interest payable on cash assets. In re Ellen Willcox, Docket No. 13.

On the treatment of German inheritance matters.

In re Paula Mendel, etc., Docket No. 4089, etc.

On the liability of Germany for extraordinary war measures taken by the Allies in German colonies.

In re Arthur E. Hungerford, Docket No. 5950.

The above-named memoranda are only those which have been printed. Numerous others, in part very extensive, on questions of basic importance, are found among the documents of the German agent dealing with the individual cases.

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was nominated, and it was subsequently repeated that he would not carry New York. From my own experience of many years with the people of the State and from the platform view-point, I felt confident that he would have a majority in the election.

It was a few days before the close of the canvass, when I was in the western part of the State, I received an urgent telegram from Mr. Blaine to join him on the train, which was to leave the Grand Central Station in New York early next morning for his tour of New England. Upon arrival I was met by a messenger, who took me at once to Mr. Blaine's car, which started a few minutes afterwards.

There was an unusual excitement in the crowd, which was speedily explained. The best account Mr. Blaine gave me himself in saying: "I felt decidedly that everything was well in New York. It was against my judgment to return here. Our national committee, however, found that a large body of Protestant clergymen wanted to meet me and extend their support. They thought this would offset the charges made by the 'mugwump' committee. I did not believe that any such recognition was necessary. However, their demands for my return and to meet this body became so importunate that I yielded my own judgment.

"I was engaged in my room with the committee and other visitors when I was summoned to the lobby of the hotel to meet the clergymen. I had prepared no speech; in fact, had not thought up a reply. When their spokesman, Reverend Doctor Burchard, began to address me, my only hope was that he would continue long enough for me to prepare an appropriate response. I had a very definite idea of what he would say and so paid little

attention to his speech. In the evening the reporters began rushing in and wanted my opinion of Doctor Burchard's statement that the main issue of the campaign was 'Rum, Romanism, and Rebellion.' If I had heard him utter these words, I would have answered at once, and that would have been effective, but I am still in doubt as to what to say about it now. The situation is very difficult, and almost anything I say is likely to bitterly offend one side or the other. Now I want you to do all the introductions and be beside me to-day as far as possible. I have become doubtful about everybody and you are always sure-footed." I have treasured that compliment ever since.

As we rode through the streets of New Haven the Democrats had placed men upon the tops of the houses on either side, and they threw out in the air thousands of leaflets, charging Blaine with having assented to the issue which Doctor Burchard had put out—"Rum, Romanism, and Rebellion." They so filled the air that it seemed a shower, and littered the streets.

A distinguished Catholic prelate said to me: "We had to resent an insult like that, and I estimate that the remark has changed fifty thousand votes." I know personally of about five thousand which were changed in our State, but still Blaine lost New York and the presidency by a majority against him of only one thousand one hundred and forty-nine votes.

Whenever I visited Washington I always called upon Mr. Blaine. The fascination of the statesman and his wonderful conversational power made every visit an event to be remembered. On one occasion he said to me: "Chauncey, I am in very low spirits to-day. I have read over the first volume of my 'Twenty Years in

Congress,' which is just going to the printer, and destroyed it. I dictated the whole of it, but I find that accuracy and elegance can only be had at the end of a pen. I shall rewrite the memoirs in ink. In these days composition by the typewriter or through the stenographer is so common." There will be many who differ with Mr. Blaine.

XIII

WILLIAM MCKINLEY

In the canvass of 1896 the Republican organization of the State of New York decided, if possible, to have the national convention nominate Levi P. Morton for president. Mr. Morton won popular favor as vice-president, and the canvass for him looked hopeful. But a new man of extraordinary force and ability came into this campaign, and that man was Mark Hanna, of Ohio. Mr. Hanna was one of the most successful of our business men. He had a rare genius for organization, and possessed resourcefulness, courage, and audacity. He was most practical and at the same time had imagination and vision. While he had taken very little part in public affairs, he had rather suddenly determined to make his devoted friend, William McKinley, president of the United States.

In a little while every State in the Union felt the force of Mr. Hanna's efforts. He applied to politics the methods by which he had so successfully advanced his large manufacturing interests. McKinley clubs and McKinley local organizations sprang up everywhere under the magic of Hanna's management. When the convention met it was plain that McKinley's nomination was assured.

The New York delegation, however, decided to present Morton's name and submit his candidacy to a vote. I was selected to make a nominating speech. If there is any hope, an orator on such an occasion has inspiration.

But if he knows he is beaten he cannot put into his effort the fire necessary to impress an audience. It is not possible to speak with force and effect unless you have faith in your cause.

After Mr. McKinley was nominated I moved that the nomination be made unanimous. The convention called for speech and platform so insistently that their call had to be obeyed. The following is an account from a newspaper of that date of my impromptu speech. The story which is mentioned in the speech was told to me as I was ascending the platform by Senator Proctor of Vermont.

"I am in the happy position now of making a speech for the man who is going to be elected. (Laughter and applause.) It is a great thing for an amateur, when his first nomination has failed, to come in and second the man who has succeeded. New York is here with no bitter feeling and with no disappointment. We recognize that the waves have submerged us, but we have bobbed up serenely. (Loud laughter.) It was a cannon from New York that sounded first the news of McKinley's nomination. They said of Governor Morton's father that he was a New England clergyman, who brought up a family of ten children on three hundred dollars a year, and was, notwithstanding, gifted in prayer. (Laughter.) It does not make any difference how poor he may be, how out of work, how ragged, how next door to a tramp anybody may be in the United States to-night, he will be 'gifted in prayer' at the result of this convention. (Cheers and laughter.)

"There is a principle dear to the American heart. It is the principle which moves American spindles, starts the industries, and makes the wage-earners sought for,

instead of seeking employment. That principle is embodied in McKinley. His personality explains the nomination to-day. And his personality will carry into the presidential chair the aspirations of the voters of America, of the families of America, of the homes of America, protection to American industry and America for Americans." (Cheers.)

As every national convention, like every individual, has its characteristics, the peculiar distinction of the Republican convention of 1896 was its adoption of the gold standard of value. An amazing and illuminating part of our political literature of that time is the claim which various statesmen and publicists make to the authorship of the gold plank in the platform.

Senator Foraker, who was chairman of the committee on resolutions, devotes a considerable part of his interesting autobiography to the discussion of this question. He is very severe upon all those who claim to have originated the idea. I have been asked by several statesmen to enforce their claims to its authorship.

The silver craze had not yet subsided. Bimetallism had strong advocates and believers in our convention. I think even our candidate was not fully convinced at that time of the wisdom of the declaration. It went into the platform rather as a venture than an article of faith, but to the surprise of both the journalists and campaign orators, it turned out that the people had become converted to the gold standard, and it proved to be the strongest and most popular declaration of the convention.

When the campaign opened the genius of Mark Hanna soon became evident. He organized a campaign of education such as had never been dreamed of, much less

attempted. Travelling publicity agents, with wagon-loads of pamphlets, filled the highways and the byways, and no home was so isolated that it did not receive its share. Columns in the newspapers, especially the country papers, were filled with articles written by experts, and the platform was never so rich with public speakers.

Such a campaign is irresistible. Its influence is felt by everybody; its arguments become automatically and almost insensibly the common language of the people. But the expense is so terrific that it will never again be attempted. There was no corruption or purchase of votes in Mr. Hanna's management. It was publicity and again publicity, but it cost nearly five millions of dollars. To reach the one hundred and ten million of people in the United States in such a way would involve a sum so vast that public opinion would never permit any approach to it.

Mr. McKinley's front-porch campaign was a picturesque and captivating feature. The candidate was a handsome man and an eloquent speaker, with a cordial and sympathetic manner which won everybody. Delegations from all parts of the country and representing every phase of American life appeared at Mr. McKinley's residence. His address to them was always appropriate and his reception made the visitors his fast friends.

I received a personal request to visit him, and on the occasion he said to me: "In certain large agricultural sections there is a very dangerous revolt in our party, owing to the bad conditions among the farmers. Wheat and corn are selling below the cost of production. I wish you would go down among them and make speeches explaining the economic conditions which have produced this result, and how we propose to and will remedy it."

"Mr. McKinley," I said, "my position as a railroad president, I am afraid, would antagonize them."

"On the contrary, your very position will draw the largest audiences and receive the greater attention."

The result proved that he was correct.

I recall one meeting in particular. There were thousands present, all farmers. In the midst of my speech one man arose and said: "Chauncey Depew, we appreciate your coming here, and we are very anxious to hear you. Your speech is very charming and interesting, but I want to put this to you personally. We here are suffering from market conditions for the products of our farms. The prices are so low that we have difficulty in meeting the interest on our mortgages and paying our taxes, no matter how seriously we economize. Now you are the president of one of the greatest railroads in the country. It is reported that you are receiving a salary of fifty thousand dollars a year. You are here in a private car. Don't you think that the contrast between you and us makes it difficult for us poor farmers to give you the welcome which we would like?"

I saw at once I had lost my audience. I then ventured upon a statement of conditions which I have often tried and always successfully. I said: "My friend, what you say about me is true. Now, as to my career, I was born and brought up in a village similar to the one which is near you here. My father gave me my education and nothing else with which to begin life. As a young lawyer I was looking for clients and not for office. I made up my mind that there were no opportunities offered in the village, but that the chances of success were in the service of corporations. The result is that I have accomplished what you have described. Now, my

friend, I believe that you have a promising boy. I also believe that to your pride and satisfaction he is going through the neighboring college here, and that you intend on account of his brightness and ability to make him a lawyer. When he is admitted to the bar, do you expect him to try to do what I have accomplished and make an independent position in life, or fail?"

The farmer shouted: "Chauncey, you are all right. Go ahead and keep it up."

My arguments and presentation were no better than many another speaker's, but, as Mr. McKinley predicted, they received an attention and aroused a discussion, because of what the old farmer had said, that no other campaigner could command.

Mr. McKinley sent for me again and said: "Sentiment is a wonderful force in politics. Mr. Bryan, my opponent, has made a remarkable speaking tour through our State. He started in the early morning from Cleveland with a speech. His train made many stops on the way to Cincinnati, where he arrived in the evening, and at each place he addressed large audiences, traversing the State from one side to the other. His endurance and versatility have made a great impression upon our people. To meet and overcome that impression, I have asked you to come here and repeat Bryan's effort. You are so much older than he is—I think we may claim nearly twice his age—that if you can do it, and I hope you can, that sentiment will be dissipated."

I traversed Mr. Bryan's route, stopped at the same stations and delivered speeches to similar audiences of about the same length. On arriving in Cincinnati in the evening I was met by a committee, the chairman of which said: "We have followed you all along from Cleve-

land, where you started at seven o'clock this morning, and it is fine. Now Mr. Bryan, when he arrived here, had no meeting. We have seven thousand people in the Music Hall, and if you will go there and speak five minutes it will make your trip a phenomenal success."

I went to the Music Hall, of course had a wonderful time and wild ovation, and spoke for an hour. The next day I was none the worse for this twelve hours' experience.

President McKinley had spent most of his life in the House of Representatives. He loved the associations and life of Congress. The most erratic and uncertain of bodies is Congress to an executive who does not understand its temper and characteristics. McKinley was past master of this. Almost every president has been greatly relieved when Congress adjourned, but Mr. McKinley often expressed to me his wish that Congress would always be in session, as he never was so happy as when he could be in daily contact with it. His door was open at all times to a senator or a member of the House of Representatives. If either failed to see him at least once a week, the absentee usually received a message stating that the president desired him to call. He was very keen in discovering any irritation on the part of any senator or member about any disappointment or fancied slight, and always most tactfully managed to straighten the matter out. He was quite as attentive and as particular with the opposition as with members of his own party.

President McKinley had a wonderful way of dealing with office-seekers and with their friends and supporters. A phrase of his became part of the common language of the capital. It was: "My dear fellow, I am most anxious

to oblige you, but I am so situated that I cannot give you what you want. I will, however, try to find you something equally as good." The anxious caller for favors, if he or his congressman failed to get the office desired, always carried away a flower or a bouquet given by the president, with a complimentary remark to be remembered. It soon came to be understood among applicants for office that a desired consulship in England could not be granted, but one of equal rank in South Africa was possible.

There were many good stories in the Senate of his tact in dealing with the opposition. A Southern senator, who as a general had made a distinguished record in the Civil War on the Confederate side, was very resentful and would frequently remark to his friends "that our president unfortunately is not a gentleman, and in his ancestry is some very common blood."

Mr. McKinley persuaded some of the senator's Southern colleagues to bring him to the White House. He expressed his regret to the senator that he should have offended him in any way and asked what he had done. The senator replied: "You have appointed for the town where my sister lives a nigger, and a bad nigger at that, for postmaster, and my sister has to go to him for her letters and stamps." The president arranged for the transfer of this postmaster and the appointment of a man recommended by the senator. The senator then went to his friends and said: "Have I remarked to you at any time that our president was not a gentleman and had somewhere in his ancestry very common blood? If I did I recall the statement and apologize. Mr. McKinley is a perfect gentleman."

All the measures which the president wished passed,

unless they were absolutely partisan, always received afterwards the support of the Southern senator.

I was in the Senate during a part of his term and nearly every day at the White House, where his reception was so cordial and his treatment of the matter presented so sympathetic that it was a delight to go there, instead of being, as usual, one of the most disagreeable tasks imposed upon a senator.

He had a way of inviting one to a private conference and with impressing you with its confidential character and the trust he reposed in your advice and judgment which was most flattering.

Entertainments at the White House were frequent, and he managed to make each dinner an event to be most pleasantly remembered. I think, while he was very courteous to everybody, he was more than usually so to me because of an incident prior to his inauguration.

A well-known journalist came to my office one day and said: "I am just from Canton, where I have been several days with the president. I discussed with him federal appointments—among others, the mission to England, in which I am interested because my father is an Englishman, and both my father and I are exceedingly anxious to have you take the post, and Mr. McKinley authorized me to ask you if you would accept the mission."

The embassy to England presented peculiar attraction to me, because I knew personally the Prince of Wales and most of the leading English statesmen and public men. The journalist said that if I accepted he would sound the press. This he did, and the response was most flattering from journals of all political views.

About the time of the inauguration Vice-President

Hobart, who was a cordial friend of mine, said to me: "There is something wrong about you with the president. It is very serious, and you can expect no recognition from the administration." I was wholly at a loss to account for the matter and would not investigate any further. Not long afterwards the vice-president came to me and said: "I have found out the truth of that matter of yours and have explained it satisfactorily to the president, who deeply regrets that he was misled by a false report from a friend in whom he had confidence." Soon after the president made me the offer of the mission to Germany. I did not understand the language and felt that I could be of little service there, and so declined.

When President McKinley was lying seriously wounded at Buffalo from the shot of the anarchist Czolgosz, I went there to see if anything could be done for his comfort. For some time there was hope he would recover, and that it would be better for him to go to Washington. I made every arrangement to take him to the capital if the doctors decided it could be done. But suddenly, as is always the case with wounds of that kind, a crisis arrived in which he died.

Vice-President Roosevelt was camping in the Adirondacks. A message reached him, and the next morning he arrived in Buffalo. The Cabinet of Mr. McKinley decided that the vice-president should be at once inaugurated as president. Colonel Roosevelt was a guest at the house of Mr. Ainsley Wilcox. He invited me to witness his inauguration, which occurred the same evening. It was a small company gathered in the parlor of Mr. Wilcox's house. Elihu Root, secretary of state, choking with emotion and in a voice full of tears, made a speech which was a beautiful tribute to the dead

president and a clear statement of the necessity of immediate action to avoid an interregnum in the government. John Raymond Hazel, United States district judge, administered the oath, and the new president delivered a brief and affecting answer to Mr. Root's address.

This inauguration was in pathetic and simple contrast to that which had preceded at the Capitol at Washington. Among the few present was Senator Mark Hanna. He had been more instrumental than any one in the United States in the selection of Mr. McKinley for president and his triumphant election. Mr. McKinley put absolute trust in Hanna, and Hanna was the most powerful personality in the country. No two men in public life were ever so admirably fitted for each other as President McKinley and Senator Hanna. The day before the death of the president Hanna could look forward to four years of increasing power and usefulness with the president who had just been re-elected. But as he walked with me from Mr. Wilcox's house that night, he felt keenly that he never could have any such relation with Colonel Roosevelt. He was personally exceedingly fond of Mr. McKinley, and to his grief at the death of his friend was added a full apprehension of his changed position in American public life.

XIV

THEODORE ROOSEVELT

The bullet of the assassin had ended fatally, and McKinley was no more. Theodore Roosevelt, vice-president, became president. Few recognized at the time there had come into the presidency of the United States one of the most remarkable, capable, and original men who ever occupied the White House.

During the following seven years President Roosevelt not only occupied but filled the stage of public affairs in the United States. Even now, two years or more after his death, with the exception of President Wilson, Roosevelt is the best known American in the world. It is difficult to predict the future because of the idealization which sometimes though rarely occurs in regard to public men, but Colonel Roosevelt is rapidly taking a position as third, with Washington and Lincoln as the other two.

My relations with Colonel Roosevelt were always most interesting. His father, who was a cordial friend of mine, was one of the foremost citizens of New York. In all civic duties and many philanthropies he occupied a first place. The public activities of the father had great influence in forming the character and directing the ambitions of his son.

Mr. Roosevelt entered public life very early and, as with everything with him, always in a dramatic way. One of the interesting characters of New York City was Frederick Gibbs, who was an active politician and a district leader. Gibbs afterwards became the national

committeeman from New York on the Republican national committee. When he died he left a collection of pictures which, to the astonishment of everybody, showed that he was a liberal and discriminating patron of art.

Gibbs had a district difficult to manage, because, commencing in the slums it ran up to Fifth Avenue. It was normally Democratic, but he managed to keep his party alive and often to win, and so gained the reputation that he was in league with Tammany. He came to me one day and said: "Our organization has lost the confidence of the 'highbrows.' They have not a great many votes, but their names carry weight and their contributions are invaluable in campaigns. To regain their confidence we are thinking of nominating for member of the legislature young Theodore Roosevelt, who has just returned from Harvard. What do you think of it?"

Of course, I advocated it very warmly. "Well," he said, "we will have a dinner at Delmonico's. It will be composed entirely of 'highbrows.' We wish you to make the principal speech, introducing young Roosevelt, who, of course, will respond. I will not be at the dinner, but I will be in the pantry."

The dinner was a phenomenal success. About three hundred in dress suits, white vests, and white neckties were discussing the situation, saying: "Where did these stories and slanders originate in regard to our district, about its being an annex of Tammany and with Tammany affiliations? We are the district, and we all know each other."

Young Roosevelt, when he rose to speak, looked about eighteen years old, though he was twenty-three. His speech was carefully prepared, and he read it from a

manuscript. It was remarkable in the emphatic way in which he first stated the evils in the city, State, and national governments, and how he would correct them if he ever had the opportunity. It is a curious realization of youthful aspirations that every one of those opportunities came to him, and in each of them he made history and permanent fame.

The term of office of Frank Black, Governor of the State of New York, was about expiring. Black was a man of great ability and courage. The people had voted nine millions of dollars to improve the Erie Canal. There were persistent rumors of fraud in the work. Governor Black ordered an investigation through an able committee which he appointed. The committee discovered that about a million dollars had been wasted or stolen. Black at once took measures to recover the money if possible and to prosecute the guilty. The opposition took advantage of this to create the impression in the public mind of the corruption of the Republican administration. The acute question was: "Should Governor Black be renominated?"

Colonel Roosevelt had just returned from Cuba, where he had won great reputation in command of the Rough Riders, and he and his command were in camp on Long Island.

Senator Platt, the State leader, was accustomed to consult me, and his confidence in my judgment was the greater from the fact that he knew that I wanted nothing, while most of the people who surrounded the leader were recipients of his favor, and either the holders of offices or expecting some consideration. He asked me to come and see him at Manhattan Beach. As usual, he entered at once upon the question in hand by saying:

"I am very much troubled about the governorship. Frank Black has made an excellent governor and did the right thing in ordering an investigation of the Canal frauds, but the result of the investigation has been that in discovering frauds the Democrats have been able to create a popular impression that the whole State administration is guilty. The political situation is very critical in any way. Benjamin Odell, the chairman of our State committee, urges the nomination of Colonel Roosevelt. As you know, Roosevelt is no friend of mine, and I don't think very well of the suggestion. Now, what do you think?"

I instantly replied: "Mr. Platt, I always look at a public question from the view of the platform. I have been addressing audiences ever since I became a voter, and my judgment of public opinion and the views of the people are governed by how they take or will take and act upon the questions presented. Now, if you nominate Governor Black and I am addressing a large audience—and I certainly will—the heckler in the audience will arise and interrupt me, saying: 'Chauncey, we agree with what you say about the Grand Old Party and all that, but how about the Canal steal?' I have to explain that the amount stolen was only a million, and that would be fatal. If Colonel Roosevelt is nominated, I can say to the heckler with indignation and enthusiasm: 'I am mighty glad you asked that question. We have nominated for governor a man who has demonstrated in public office and on the battlefield that he is a fighter for the right, and always victorious. If he is selected, you know and we all know from his demonstrated characteristics, courage and ability, that every thief will be caught and punished, and every dollar that can be found restored

to the public treasury.' Then I will follow the colonel leading his Rough Riders up San Juan Hill and ask the band to play the 'Star-Spangled Banner.'"

Platt said very impulsively: "Roosevelt will be nominated."

When the State convention met to nominate a State ticket, I was selected to present the name of Colonel Roosevelt as a candidate for governor. I have done that a great many times in conventions, but have never had such a response. As I went on reciting the achievements of Roosevelt, his career, his accomplishments, and his great promise, the convention went wild with enthusiasm. It was plain that no mistake had been made in selecting him as the candidate.

During the campaign he made one of the most picturesque canvasses the State has ever experienced. He was accompanied in his travels by a large staff of orators, but easily dominated the situation and carried the audience with him. He was greatly amused at a meeting where one of his Rough Riders, who was in the company, insisted upon making a speech. The Rough Rider said: "My friends and fellow citizens, my colonel was a great soldier. He will make a great governor. He always put us boys in battle where we would be killed if there was a chance, and that is what he will do with you."

Roosevelt as governor was, as always, most original. New York was an organization State, with Mr. Platt as leader, and with county leaders of unusual ability and strength. Governors had been accustomed to rely upon the organization both for advice and support. Roosevelt could not bear any kind of control. He sought advice in every direction and then made up his mind.

This brought him often in conflict with local leaders and sometimes with the general organization.

On one occasion the State chairman, who was always accustomed to be in Albany during the closing day of the legislature, to prevent in the haste and confusion, characteristic of legislation at this time, the passage of bad or unpopular measures, bade the governor good-by at midnight, as the legislature was to adjourn the following day with the understanding that lawmaking was practically over.

A large real-estate delegation arrived the next morning, with the usual desire to relieve real-estate from taxation by putting it somewhere else. They came with a proposition to place new burdens upon public utilities. It was too late to formulate and introduce a measure on a question so important, but there was a bill which had been in the legislature most of the session and never received serious consideration. The governor sent an emergency message to the legislature, which had remaining only one hour of life to pass that bill.

Next day the tremendous interest in public utilities was panic-stricken because the bill was so crude that it amounted to confiscation. The governor, when applied to, said: "Yes, I know that the bill is very crude and unfit to become a law, but legislation on this subject is absolutely necessary. I will do this: I have thirty days before I must make up my mind to sign the bill, or let it become a law without my signature. Within that thirty days I will call the legislature together again. Then you can prepare and submit to me a proper bill, and if we can agree upon it, I will present it to the legislature. If the legislature passes that measure I will sign it, but if it does not, I will let the present measure, bad as it is, become a law."

The result of the threat was that a very good and timely act was presented in regard to the taxation of public utilities, a measure which largely increased municipal and State revenues. I know of no governor in my time who would have had the originality and the audacity to accomplish what he desired by such drastic operation.

Roosevelt's administration was high-minded and patriotic. But by his exercise of independent judgment and frequently by doing things without consulting the leaders, State or local, he became exceedingly unpopular with the organization. It was evident that it would be very difficult to renominate him. It was also evident that on account of his popularity with the people, if he failed in the renomination, the party would be beaten. So it was unanimously decided to put him on the national ticket as vice-president.

The governor resisted this with all his passionate energy. He liked the governorship. He thought there were many things which he could do in another term, and he believed and so stated that the vice-presidency was a tomb. He thought that nobody could be resurrected when once buried in that sarcophagus.

The national Republican convention of 1900 was a ratification meeting. President McKinley's administration had been exceedingly popular. The convention met practically to indorse McKinley's public acts and renominate him for another term. The only doubtful question was the vice-presidency. There was a general accord of sentiment in favor of Governor Roosevelt, which was only blocked by his persistent refusal.

Roosevelt and I were both delegates at large, and that position gave him greater opportunity to emphasize his

disinclination. A very intimate friend of his called upon me and begged that I would use all my influence to prevent the colonel's nomination. This friend said to me: "The governor's situation, officially and personally, makes it impossible for him to go to Washington. On the official side are his unfinished legislation and the new legislation greatly needed by the State, which will add enormously to his reputation and pave the way for his future. He has very little means. As governor his salary is ample. The Executive Mansion is free, with many contributory advantages, and the schools of Albany admirable for the education of his six children. While in Washington the salary of vice-president is wholly inadequate to support the dignity of the position, and it is the end of a young man of a most promising career."

I knew what the friend did not know, and it was that Mr. Roosevelt could not be governor again. I was so warmly attached to him and so anxious for his future that I felt it was my duty to force his nomination if possible.

Governor Odell was chairman of the delegation for all convention purposes, but in the distribution of honors I was made the presiding officer at its meetings. The delegation met to consider the vice-presidency. Several very eloquent speeches were made in favor of Mr. Roosevelt, but in an emphatic address he declined the nomination. He then received a unanimous vote, but again declined. A delegate then arose and suggested that he reconsider his determination, and several others joined most earnestly in this request. Roosevelt was deeply affected, but, nevertheless, firmly declined.

I knew there was a member of the delegation who had

canvassed it to secure the honor in case Roosevelt became impossible, and that the next motion would be the nomination of this aspirant. So I abruptly declared the meeting adjourned. I did this in the hope that during the night, with the pressure brought to bear upon him, the colonel would change his mind. In the morning Mr. Roosevelt surrendered his convictions and agreed to accept the nomination.

In every convention there is a large number of men prominent in their several delegations who wish to secure general attention and publicity. As there were no disputes as to either candidate or platform, these gentlemen all became anxious to make speeches favoring the candidates, McKinley and Roosevelt. There were so many of these speeches which, of course, were largely repetitions, that the convention became wearied and impatient. The last few were not heard at all on account of the confusion and impatience of the delegates. While one orator was droning away, a delegation from a Western State came over to me and said: "We in the extreme West have never heard you speak, and won't you oblige us by taking the platform?"

I answered: "The audience will not stand another address." Roosevelt, who sat right in front of me, then remarked: "Yes, they will from you. These speeches have pretty nearly killed the ticket, and if it keeps up the election is over, and McKinley and I are dead." He then seized me and almost threw me on the platform.

The novelty of the situation, which was suddenly grasped by the delegates, commanded attention. I recalled what Mr. Lincoln had once said to me, defending his frequent use of anecdotes, and this is what he said: "Plain people, take them as you find them, are

more easily influenced through the medium of a broad and humorous illustration than in any other way."

I had heard a new story, a rare thing, and began with the narration of it. Alongside the chairman sat Senator Thurston. He was a fine speaker, very ornate and highly rhetorical. He never indulged in humor or unbent his dignity and formality. I heard him say in a sepulchral voice to the chairman: "Great God, sir, the dignity and solemnity of this most important and historical occasion is to be ruined by a story." Happily the story was a success and gave the wearied audience two opportunities to hear my speech. Their laughter was internal relief, and it was giving the external relief of changing their positions for new and more restful ones.

My friend, John M. Thurston, came to Philadelphia with a most elaborate and excellent oration. Sitting in the audience on three different occasions, I heard it with as much pleasure the last time as I had the first.

When Mr. Roosevelt as vice-president came to preside over the Senate, it was soon evident that he would not be a success. His talents were executive and administrative. The position of the presiding officer of the United States Senate is at once easy and difficult. The Senate desires impartiality, equable temper, and knowledge of parliamentary law from its presiding officer. But it will not submit to any attempt on the part of the presiding officer to direct or advise it, and will instantly resent any arbitrary ruling. Of course, Mr. Roosevelt presided only at a few meetings before the final adjournment. When Congress met again he was President of the United States.

Senators and members soon found that there was a change at the White House. No two men were ever so

radically different in every respect as McKinley and Roosevelt. Roosevelt loved to see the people in a mass and rarely cared for private or confidential interviews. He was most hospitable and constantly bringing visitors to luncheon when the morning meetings in the executive offices had closed, and he had not had a full opportunity to hear or see them.

Senator Hanna was accustomed to have a few of his colleagues of the Senate dine with him frequently, in order to consult on more effective action upon pending measures. President Roosevelt, who knew everything that was going on, often burst into Hanna's house after dinner and with the utmost frankness submitted the problems which had arisen at the White House, and upon which he wished advice or, if not advice, support—more frequently support.

Any one who attended the morning conferences, where he saw senators and members of the House, and the public, was quite sure to be entertained. I remember on one occasion I had been requested by several friends of his, men of influence and prominence in New York, to ask for the appointment of minister to a foreign government for a journalist of some eminence. When I entered the Cabinet room it was crowded, and the president knew that I was far from well, so he at once called my name, asked how I was and what I wanted. I told him that I had to leave Washington that day on the advice of my doctor for a rest, and what I wanted was to present the name of a gentleman for appointment as a minister, if I could see him for five minutes.

The president exclaimed: "We have no secrets here. Tell it right out." I then stated the case. He asked who was behind the applicant. I told him. Then he

said, "Yes, that's all right," to each one until I mentioned also the staff of the gentleman's newspaper, which was one of the most prominent and powerful in the country but a merciless critic of the president. He shouted at once: "That settles it. Nothing which that paper wishes will receive any consideration from me." Singularly enough, the paper subsequently became one of his ardent advocates and supporters.

On another occasion I was entering his private office as another senator was coming out of the Cabinet room, which was filled. He called out: "Senator Depew, do you know that man going out?" I answered: "Yes, he is a colleague of mine in the Senate." "Well," he shouted, "he is a crook." His judgment subsequently proved correct.

Mr. Roosevelt and his wife were all their lives in the social life of the old families of New York who were admitted leaders. They carried to the White House the culture and conventions of what is called the best society of the great capitals of the world. This experience and education came to a couple who were most democratic in their views. They loved to see people and met and entertained every one with delightful hospitality.

Roosevelt was a marvel of many-sidedness. Besides being an executive as governor of a great State and administrator as civil-service commissioner and police commissioner of New York, he was an author of popular books and a field naturalist of rare acquirements. He was also a wonderful athlete. I often had occasion to see him upon urgent matters, and was summoned to his gymnasium, where he was having a boxing match with a well-known pugilist, and getting the better of his an-

tagonist, or else launching at his fencing master. The athletics would cease, to be resumed as soon as he had in his quick and direct way disposed of what I presented.

Horseback riding was a favorite exercise with him, and his experience on his Western ranch and in the army had made him one of the best riders in the world. The foreign diplomats in Washington, with their education that their first duty was to be in close touch with the chief magistrate, whether czar, queen, king, or president, found their training unequal to keeping close to President Roosevelt, except one, and he told me with great pleasure that though a poor rider he joined the president in his horseback morning excursions. Sometimes, he said, when they came to a very steep, high, and rough hill the president would shout, "Let us climb to the top," and the diplomat would struggle over the stones, the underbrush, and gullies, and return to his horse with torn garments after sliding down the hill. At another time, when on the banks of the Potomac, where the waters were raging rapids, the president said, "We will go to that island in the middle of the river," and immediately plunge in. The diplomat followed and reached the island after wading and swimming, and with great difficulty returned with sufficient strength to reach home. He had an attack of pneumonia from this unusual exposure, but thereafter was the envy and admiration of his colleagues and increased the confidence of his own government by this intimacy with the president.

The president's dinners and luncheons were unique because of his universal acquaintance with literary and scientific people. There were generally some of them present. His infectious enthusiasm and hearty cordiality drew out the best points of each guest. I was pres-

ent at a large dinner one evening when an instance occurred which greatly amused him. There were some forty guests. When they were seated, the president noticed four vacant chairs. He sent one of his aides to ascertain the trouble. The aide discovered an elderly senator standing with his wife, and another senator and a lady looking very disconsolate. The aged senator refused to take out a lady as his card directed or leave his wife to a colleague. He said to the president's aide, who told him that dinner was waiting and what he had to do: "When I eat I eat with my wife, or I don't eat at all." The old gentleman had his way.

The president had one story which he told often and with much glee. While he was on the ranch the neighbors had caught a horse thief and hung him. They soon discovered that they had made a mistake and hung the wrong man. The most diplomatic among the ranchers was selected to take the body home and break the news gently to his wife. The cowboy ambassador asked the wife: "Are you the wife of ——?" She answered "Yes." "Well," said the ambassador, "you are mistaken. You are his widow. I have his body in the wagon. You need not feel bad about it, because we hung him thinking he was the horse thief. We soon after found that he was innocent. The joke is on us."

Mr. Roosevelt was intensely human and rarely tried to conceal his feelings. He was to address the New York State Fair at Syracuse. The management invited me as a United States Senator from New York to be present. There were at least twenty thousand on the fair ground, and Mr. Roosevelt read his speech, which he had elaborately prepared, detailing his scheme for harmonizing the relations between labor and capital. The

speech was long and very able and intended for publication all over the country. But his audience, who were farmers, were not much interested in the subject. Besides, they had been wearied wandering around the grounds and doing the exhibits, waiting for the meeting to begin. I know of nothing so wearisome to mind and body as to spend hours going through the exhibits of a great fair. When the president finished, the audience began calling for me. I was known practically to every one of them from my long career on the platform.

Knowing Roosevelt as I did, I was determined not to speak, but the fair management and the audience would not be denied. I paid the proper compliments to the president, and then, knowing that humor was the only possible thing with such a tired crowd, I had a rollicking good time with them. They entered into the spirit of the fun and responded in a most uproarious way. I heard Roosevelt turn to the president of the fair and say very angrily: "You promised me, sir, that there would be no other speaker."

When I met the president that evening at a large dinner given by Senator Frank Hiscock, he greeted me with the utmost cordiality. He was in fine form, and early in the dinner took entire charge of the discussion. For three hours he talked most interestingly, and no one else contributed a word. Nevertheless, we all enjoyed the evening, and not the least the president himself.

I used to wonder how he found time, with his great activities and engagements, to read so much. Publishers frequently send me new books. If I thought they would interest him I mentioned the work to him, but invariably he had already read it.

When my first term as senator expired and the ques-

tion of my re-election was before the legislature, President Roosevelt gave me his most cordial and hearty support.

Events to his credit as president, which will be monuments in history, are extraordinary in number and importance. To mention only a few: He placed the Monroe Doctrine before European governments upon an impregnable basis by his defiance to the German Kaiser, when he refused to accept arbitration and was determined to make war on Venezuela. The president cabled: "Admiral Dewey with the Atlantic Fleet sails to-morrow." And the Kaiser accepted arbitration. Raissuli, the Moroccan bandit, who had seized and held for ransom an American citizen named Perdicaris, gave up his captive on receipt of this cable: "Perdicaris alive or Raissuli dead." He settled the war between Russia and Japan and won the Nobel prize for peace.

Roosevelt built the Panama Canal when other efforts had failed for five hundred years. As senator from his own State, I was in constant consultation with him while he was urging legislation necessary to secure the concession for the construction of the canal. The difficulties to be overcome in both Houses seemed insurmountable, and would have been so except for the marvellous resourcefulness and power of the president.

When the Republican convention met in 1908, I was again delegate at large. It was a Roosevelt convention and crazy to have him renominated. It believed that he could overcome the popular feeling against a third term. Roosevelt did not think so. He believed that in order to make a third term palatable there must be an interval of another and different administration. When the convention found that his decision was unalterably

not to accept the nomination himself, it was prepared to accept any one he might advise. He selected his secretary of war and most intimate friend, William Howard Taft. Taft had a delightful personality, and won distinction upon the bench, and had proved an admirable administrator as governor of the Philippine Islands. After Mr. Taft's election the president, in order that the new president and his administration might not be embarrassed by his presence and prestige, went on a two years' trip abroad.

During that trip he was more in the popular mind at home and abroad than almost any one in the world. If he reviewed the German army with the Kaiser, the press was full of the common characteristics and differences between the two men and of the unprecedented event of the guest giving advice to the Kaiser.

When he visited England he told in a public speech of his experience in Egypt, and recommended to the English Government that, if they expected to continue to govern Egypt, to begin to govern it.

All France was aghast and then hilarious when, in an address before the faculties of Sorbonne, he struck at once at the weak point of the future and power of France, and that was race suicide.

XV

UNITED STATES SENATE

My twelve years in the Senate were among the happiest of my life. The Senate has long enjoyed the reputation of being the best club in the world, but it is more than that. My old friend, Senator Bacon, of Georgia, often said that he preferred the position of senator to that of either President or Chief Justice of the United States. There is independence in a term of six years which is of enormous value to the legislative work of the senator. The member of the House, who is compelled to go before his district every two years, must spend most of his time looking after his re-election. Then the Senate, being a smaller body, the associations are very close and intimate. I do not intend to go into discussion of the measures which occupied the attention of the Senate during my time. They are a part of the history of the world. The value of a work of this kind, if it has any value, is in personal incidents.

One of the most delightful associations of a lifetime, personally and politically, was that with Vice-President James S. Sherman. During the twenty-two years he was in the House of Representatives he rarely was in the City of New York without coming to see me. He became the best parliamentarian in Congress, and was generally called to the chair when the House met in committee of the whole. He was intimately familiar with every political movement in Washington, and he had a

rare talent for discriminatory description, both of events and analysis of the leading characters in the Washington drama. He was one of the wisest of the advisers of the organization of his party, both national and State.

When President Roosevelt had selected Mr. Taft as his successor he made no indication as to the vice-presidency. Of course, the nomination of Mr. Taft under such conditions was a foregone conclusion, and when the convention met it was practically unanimous for Roosevelt's choice. Who was the best man to nominate for vice-president in order to strengthen the ticket embarrassed the managers of the Taft campaign. The Republican congressmen who were at the convention were practically unanimous for Sherman, and their leader was Uncle Joe Cannon. We from New York found the Taft managers discussing candidates from every doubtful State. We finally convinced them that New York was the most important, but they had gone so far with State candidates that it became a serious question how to get rid of them without offending their States.

The method adopted by one of the leading managers was both adroit and hazardous. He would call up a candidate on the telephone and say to him: "The friends of Mr. Taft are very favorable to you for vice-president. Will you accept the nomination?" The candidate would hesitate and begin to explain his ambitions, his career and its possibilities, and the matter which he would have to consider. Before the prospective candidate had finished, the manager would say, "Very sorry, deeply regret," and put up the telephone.

When the nomination was made these gentlemen who might have succeeded would come around to the manager and say impatiently and indignantly: "I was all

right. Why did you cut me off?" However, those gentlemen have had their compensation. Whenever you meet one of them he will say to you: "I was offered the vice-presidency with Taft but was so situated that I could not accept."

One evening during the convention a wind and rain storm drove everybody indoors. The great lobby of Congress Hall was crowded, and most of them were delegates. Suddenly there was a loud call for a speech, and some husky and athletic citizen seized and lifted me on to a chair. After a story and a joke, which put the crowd into a receptive mood, I made what was practically a nominating speech for Sherman. The response was intense and unanimous. When I came down from a high flight as to the ability and popularity to the human qualities of "Sunny Jim," I found "Sunny Jim" such a taking characterization, and it was echoed and re-echoed. I do not claim that speech nominated Sherman, only that nearly everybody who was present became a most vociferous advocate for Sherman for vice-president.

The position of vice-president is one of the most difficult in our government. Unless the president requests his advice or assistance, he has no public function except presiding over the Senate. No president ever called the vice-president into his councils. McKinley came nearest to it during his administration, with Hobart, but did not keep it up.

President Harding has made a precedent for the future by inviting Vice-President Coolidge to attend all Cabinet meetings. The vice-president has accepted and meets regularly with the Cabinet.

Sherman had one advantage over other vice-presidents in having been for nearly a quarter of a century a leader

in Congress. Few, if any, who ever held that office have been so popular with the Senate and so tactful and influential when they undertook the very difficult task of influencing the action of a Senate, very jealous of its prerogatives and easily made resentful and hostile.

Among my colleagues in the Senate were several remarkable men. They had great ability, extraordinary capacity for legislation, and, though not great orators, possessed the rare faculty of pressing their points home in short and effective speeches. Among them was Senator Frye, of Maine. He was for many years chairman of the great committee on commerce. Whatever we had of a merchant marine was largely due to his persistent efforts. He saved the government scores of millions in that most difficult task of pruning the River and Harbor Bill. He possessed the absolute confidence of both parties, and was the only senator who could generally carry the Senate with him for or against a measure. While wise and the possessor of the largest measure of common sense, yet he was one of the most simple-minded of men. I mean by this that he had no guile and suspected none in others. Whatever was uppermost in his mind came out. These characteristics made him one of the most delightful of companions and one of the most harmonious men to work with on a committee.

Clement A. Griscom, the most prominent American ship owner and director, was very fond of Senator Frye. Griscom entertained delightfully at his country home near Philadelphia. He told me that at one time Senator Frye was his guest over a week-end. To meet the senator at dinner on Saturday evening, he had invited great bankers, lawyers, and captains of industry of Philadelphia. Their conversation ran from enterprises and

combinations involving successful industries and exploitations to individual fortunes and how they were accumulated. The atmosphere was heavy with millions and billions. Suddenly Griscom turned to Senator Frye and said: "I know that our successful friends here would not only be glad to hear but would learn much if you would tell us of your career." "It is not much to tell," said Senator Frye, "especially after these stories which are like chapters from the 'Arabian Nights.' I was very successful as a young lawyer and rising to a leading practice and head of the bar of my State when I was offered an election to the House of Representatives. I felt that it would be a permanent career and that there was no money in it. I consulted my wife and told her that it meant giving up all prospects of accumulating a fortune or independence even, but it was my ambition, and I believed I could perform valuable service to the public, and that as a career its general usefulness would far surpass any success at the bar. My wife agreed with me cordially and said that she would economize on her part to any extent required.

"So," the senator continued, "I have been nearly thirty years in Congress, part of this time in the House and the rest in the Senate. I have been able on my salary to meet our modest requirements and educate our children. I have never been in debt but once. Of course, we had to calculate closely and set aside sufficient to meet our extra expenses in Washington and our ordinary one at home. We came out a little ahead every year but one. That year the president very unexpectedly called an extra session, and for the first time in twenty years I was in debt to our landlord in Washington."

Griscom told me that this simple narrative of a statesman of national reputation seemed to make the monumental achievements of his millionaire guests of little account.

Senator Frye's genial personality and vivid conversation made him a welcome guest at all entertainments in Washington. There was a lady at the capital at that time who entertained a great deal and was very popular on her own account, but she always began the conversation with the gentleman who took her out by narrating how she won her husband. I said one day to Senator Frye: "There will be a notable gathering at So-and-So's dinner to-night. Are you going?" He answered: "Yes, I will be there; but it has been my lot to escort to dinner this lady"—naming her—"thirteen times this winter. She has told me thirteen times the story of her courtship. If it is my luck to be assigned to her to-night, and she starts that story, I shall leave the table and the house and go home."

Senator Aldrich, of Rhode Island, was once called by Senator Quay the schoolmaster of the Senate. As the head of the finance committee he had commanding influence, and with his skill in legislation and intimate knowledge of the rules he was the leader whenever he chose to lead. This he always did when the policy he desired or the measure he was promoting had a majority, and the opposition resorted to obstructive tactics. As there is no restriction on debate in the Senate, or was none at my time, the only way the minority could defeat the majority was by talking the bill to death. I never knew this method to be used successfully but once, because in the trial of endurance the greater number wins. The only successful talk against time was by Senator Carter,

of Montana. Carter was a capital debater. He was invaluable at periods when the discussion had become very bitter and personal. Then in his most suave way he would soothe the angry elements and bring the Senate back to a calm consideration of the question. When he arose on such occasions, the usual remark among those who still kept their heads was: "Carter will now bring out his oil can and pour oil upon the troubled waters"—and it usually proved effective.

Senator George F. Hoar, of Massachusetts, seemed to be a revival of what we pictured in imagination as the statesmen who framed the Constitution of the United States, or the senators who sat with Webster, Clay, and Calhoun. He was a man of lofty ideals and devotion to public service. He gave to each subject on which he spoke an elevation and dignity that lifted it out of ordinary senatorial discussions. He had met and knew intimately most of the historical characters in our public life for fifty years, and was one of the most entertaining and instructive conversationalists whom I ever met.

On the other hand, Senator Benjamin Tillman, of South Carolina, who was an ardent admirer of Senator Hoar, was his opposite in every way. Tillman and I became very good friends, though at first he was exceedingly hostile. He hated everything which I represented. With all his roughness, and at the beginning his brutality, he had a singular streak of sentiment.

I addressed the first dinner of the Gridiron Club at its organization and have been their guest many times since. The Gridiron Club is an association of the newspaper correspondents at Washington, and their dinners several times a year are looked forward to with the utmost interest and enjoyed by everybody privileged to attend.

The Gridiron Club planned an excursion to Charleston, S. C., that city having extended to them an invitation. They invited me to go with them and also Senator Tillman. Tillman refused to be introduced to me because I was chairman of the board of directors of the New York Central Railroad, and he hated my associations and associates. We had a wonderful welcome from the most hospitable of cities, the most beautifully located City of Charleston. On the many excursions, luncheons, and gatherings, I was put forward to do the speaking, which amounted to several efforts a day during our three days' visit. The Gridiron stunt for Charleston was very audacious. There were many speakers, of course, including Senator Tillman, who hated Charleston and the Charlestonians, because he regarded them as aristocrats and told them so. There were many invited to speak who left their dinners untasted while they devoted themselves to looking over their manuscripts, and whose names were read in the list at the end of the dinner, but their speeches were never called for.

On our way home we stopped for luncheon at a place outside of Charleston. During the luncheon an earthquake shook the table and rattled the plates. I was called upon to make the farewell address for the Gridiron Club to the State of South Carolina. Of course the earthquake and its possibilities gave an opportunity for pathos as well as humor, and Tillman was deeply affected. When we were on the train he came to me and with great emotion grasped my hand and said: "Chauncey Depew, I was mistaken about you. You are a damn good fellow." And we were good friends until he died.

I asked Tillman to what he owed his phenomenal rise

and strength in the conservative State of South Carolina. He answered: "We in our State were governed by a class during the colonial period and afterwards until the end of the Civil War. They owned large plantations, hundreds of thousands of negroes, were educated for public life, represented our State admirably, and did great service to the country. They were aristocrats and paid little attention to us poor farmers, who constituted the majority of the people. The only difference between us was that they had been colonels or generals in the Revolutionary War, or delegates to the Continental Congress or the Constitutional Convention, while we had been privates, corporals, or sergeants. They generally owned a thousand slaves, and we had from ten to thirty. I made up my mind that we should have a share of the honors, and they laughed at me. I organized the majority and put the old families out of business, and we became and are the rulers of the State."

Among the most brilliant debaters of any legislative body were Senators Joseph W. Bailey, of Texas, and John C. Spooner, of Wisconsin. They would have adorned and given distinction to any legislative body in the world. Senator Albert J. Beveridge, of Indiana, and Senator Joseph B. Foraker, of Ohio, were speakers of a very high type. The Senate still has the statesmanship, eloquence, scholarship, vision, and culture of Senator Lodge, of Massachusetts.

One of the wonders of the Senate was Senator W. M. Crane, of Massachusetts. He never made a speech. I do not remember that he ever made a motion. Yet he was the most influential member of that body. His wisdom, tact, sound judgment, encyclopædic knowledge of public affairs and of public men made him an authority.

Senator Hanna, who was a business man pure and simple, and wholly unfamiliar with legislative ways, developed into a speaker of remarkable force and influence. At the same time, on the social side, with his frequent entertainments, he did more for the measures in which he was interested. They were mainly, of course, of a financial and economic character.

One of the characters of the Senate, and one of the upheavals of the Populist movement was Senator Jeff. Davis, of Arkansas. Davis was loudly, vociferously, and clamorously a friend of the people. Precisely what he did to benefit the people was never very clear, but if we must take his word for it, he was the only friend the people had. Among his efforts to help the people was to denounce big business of all kinds and anything which gave large employment or had great capital. I think that in his own mind the ideal state would have been made of small landowners and an occasional lawyer. He himself was a lawyer.

One day he attacked me, as I was sitting there listening to him, in a most vicious way, as the representative of big corporations, especially railroads, and one of the leading men in the worst city in the world, New York, and as the associate of bankers and capitalists. When he finished Senator Crane went over to his seat and told him that he had made a great mistake, warned him that he had gone so far that I might be dangerous to him personally, but in addition to that, with my ridicule and humor, I would make him the laughing-stock of the Senate and of the country. Jeff, greatly alarmed, waddled over to my seat and said: "Senator Depew, I hope you did not take seriously what I said. I did not mean anything against you. I won't do it again, but I thought

that you would not care, because it won't hurt you, and it does help me out in Arkansas." I replied: "Jeff, old man, if it helps you, do it as often as you like." Needless to say, he did not repeat.

I have always been deeply interested in the preservation of the forests and a warm advocate of forest preservers. I made a study of the situation of the Appalachian Mountains, where the lumberman was doing his worst, and millions of acres of fertile soil from the denuded hills were being swept by the floods into the ocean every year. I made a report from my committee for the purchase of this preserve, affecting, as it did, eight States, and supported it in a speech. Senator Eugene Hale, a Senate leader of controlling influence, had been generally opposed to this legislation. He became interested, and, when I had finished my speech, came over to me and said: "I never gave much attention to this subject. You have convinced me and this bill should be passed at once, and I will make the motion." Several senators from the States affected asked for delay in order that they might deliver speeches for local consumption. The psychological moment passed and that legislation could not be revived until ten years afterwards, and then in a seriously modified form.

I worked very hard for the American mercantile marine. A subsidy of four million dollars a year in mail contracts would have been sufficient, in addition to the earnings of the ships, to have given us lines to South and Central America, Australia, and Asia.

Shakespeare's famous statement that a rose by any other name would smell as sweet has exceptions. In the psychology of the American mind the word subsidy is fatal to any measure. After the most careful investiga-

tion, while I was in the Senate, I verified this statement, that a mail subsidy of four millions a year would give to the United States a mercantile marine which would open new trade routes for our commerce. This contribution would enable the ship-owners to meet the losses which made it impossible for them to compete with the ships of other countries, some having subsidies and all under cheaper expenses of operation. It would not all be a contribution because part of it was a legitimate charge for carrying the mails. The word subsidy, however, could be relied upon to start a flood of fiery oratory, charging that the people of the United States were to be taxed to pour money into the pockets of speculators in New York and financial crooks in Wall Street.

We have now created a mercantile marine through the Shipping Board which is the wonder and amazement of the world. It has cost about five hundred millions. Part of it is junk already, and a part available is run at immense loss, owing to discriminatory laws. Recently a bill was presented to Congress for something like sixty millions of dollars to make up the losses in the operations of our mercantile marine for the year. While a subsidy of four millions under private management would have been a success but was vetoed as a crime, the sixty millions are hailed as a patriotic contribution to public necessity.

A river and harbor bill of from thirty to fifty millions of dollars was eagerly anticipated and enthusiastically supported. It was known to be a give and take, a swap and exchange, where a few indispensable improvements had to carry a large number of dredgings of streams, creeks, and bayous, which never could be made navigable. Many millions a year were thrown away in these

river and harbor bills, but four millions a year to restore the American mercantile marine aroused a flood of indignant eloquence, fierce protest, and wild denunciation of capitalists, who would build and own ships, and it was always fatal to the mercantile marine.

Happily the war has, among its benefits, demonstrated to the interior and mountain States that a merchant marine is as necessary to the United States as its navy, and that we cannot hope to expand and retain our trade unless we have the ships.

I remember one year when the river and harbor bill came up for passage on the day before final adjournment. The hour had been fixed by both Houses, and, therefore, could not be extended by one House. The administration was afraid of the bill because of the many indefensible extravagances there were in it. At the same time, it had so many political possibilities that the president was afraid to veto it. Senator Carter was always a loyal administration man, and so he was put forward to talk the bill to death. He kept it up without yielding the floor for thirteen hours, and until the hour of adjournment made action upon the measure impossible.

I sat there all night long, watching this remarkable effort. The usual obstructor soon uses up all his own material and then sends pages of irrelevant matter to the desk for the clerk to read, or he reads himself from the pages of the *Record*, or from books, but Carter stuck to his text. He was a man of wit and humor. Many items in the river and harbor bill furnished him with an opportunity of showing how creeks and trout streams were to be turned by the magic of the money of the Treasury into navigable rivers, and inaccessible ponds were to be dredged into harbors to float the navies of the world.

The speech was very rich in anecdotes and delightful in its success by an adroit attack of tempting a supporter of the measure into aiding the filibuster by indignantly denying the charge which Carter had made against him. By this method Carter would get a rest by the folly of his opponent. The Senate was full and the galleries were crowded during the whole night, and when the gavel of the vice-president announced that no further debate was admissible and the time for adjournment had arrived, and began to make his farewell speech, Carter took his seat amidst the wreck of millions and the hopes of the exploiters, and the Treasury of the United States had been saved by an unexpected champion.

The country does not appreciate the tremendous power of the committees, as legislative business constantly increases with almost geometrical progression. The legislation of the country is handled almost entirely in committees. It requires a possible revolution to overcome the hostility of a committee, even if the House and the country are otherwise minded. Some men whose names do not appear at all in the *Congressional Record*, and seldom in the newspapers, have a certain talent for drudgery and detail which is very rare, and when added to shrewdness and knowledge of human nature makes such a senator or representative a force to be reckoned with on committees. Such a man is able to hold up almost anything.

I found during my Washington life the enormous importance of its social side. Here are several hundred men in the two Houses of Congress, far above the average in intelligence, force of character, and ability to accomplish things. Otherwise they would not have been elected. They are very isolated and enjoy far beyond

those who have the opportunity of club life, social attentions. At dinner the real character of the guest comes out, and he is most responsive to these attentions. Mrs. Depew and I gave a great many dinners, to our intense enjoyment and, I might say, education. By this method I learned to know in a way more intimate than otherwise would have been possible many of the most interesting characters I have ever met.

Something must be done, and that speedily, to bridge the widening chasm between the Executive and the Congress. Our experience with President Wilson has demonstrated this. As a self-centred autocrat, confident of himself and suspicious of others, hostile to advice or discussion, he became the absolute master of the Congress while his party was in the majority.

The Congress, instead of being a co-ordinate branch, was really in session only to accept, adopt, and put into laws the imperious will of the president. When, however, the majority changed, there being no confidence between the executive and the legislative branch of the government, the necessary procedure was almost paralyzed. The president was unyielding and the Congress insisted upon the recognition of its constitutional rights. Even if the president is, as McKinley was, in close and frequent touch with the Senate and the House of Representatives, the relation is temporary and unequal, and not what it ought to be, automatic.

Happily we have started a budget system; but the Cabinet should have seats on the floor of the Houses, and authority to answer questions and participate in debates. Unless our system was radically changed, we could not adopt the English plan of selecting the members of the Cabinet entirely from the Senate and the House. But

we could have an administration always in close touch with the Congress if the Cabinet members were in attendance when matters affecting their several departments were under discussion and action.

I heard Senator Nelson W. Aldrich, who was one of the shrewdest and ablest legislators of our generation, say that if business methods were applied to the business of the government in a way in which he could do it, there would be a saving of three hundred millions of dollars a year. We are, since the Great War, facing appropriations of five or six billions of dollars a year. I think the saving of three hundred millions suggested by Senator Aldrich could be increased in proportion to the vast increase in appropriations.

There has been much discussion about restricting unlimited debates in the Senate and adopting a rigid closure rule. My own recollection is that during my twelve years unlimited discussion defeated no good measure, but talked many bad ones to death. There is a curious feature in legislative discussion, and that is the way in which senators who have accustomed themselves to speak every day on each question apparently increase their vocabulary as their ideas evaporate. Two senators in my time, who could be relied upon to talk smoothly as the placid waters of a running brook for an hour or more every day, had the singular faculty of apparently saying much of importance while really developing no ideas. In order to understand them, while the Senate would become empty by its members going to their committee rooms, I would be a patient listener. I finally gave that up because, though endowed with reasonable intelligence and an intense desire for knowledge, I never could grasp what they were driving at.

XVI

AMBASSADORS AND MINISTERS

The United States has always been admirably represented at the Court of St. James. I consider it as a rare privilege and a delightful memory that I have known well these distinguished ambassadors and ministers who served during my time. I was not in England while Charles Francis Adams was a minister, but his work during the Civil War created intense interest in America. It is admitted that he prevented Great Britain from taking such action as would have prolonged the war and endangered the purpose which Mr. Lincoln was trying to accomplish, namely, the preservation of the Union. His curt answer to Lord John Russell, "This means war," changed the policy of the British Government.

James Russell Lowell met every requirement of the position, but, more than that, his works had been read and admired in England before his appointment. Literary England welcomed him with open arms, and official England soon became impressed with his diplomatic ability. He was one of the finest after-dinner speakers, and that brought him in contact with the best of English public life. He told me an amusing instance. As soon as he was appointed, everybody who expected to meet him sent to the book stores and purchased his works. Among them, of course, was the "Biglow Papers." One lady asked him if he had brought Mrs. Biglow with him.

The secretary of the embassy, William J. Hoppin, was a very accomplished gentleman. He had been president

of the Union League Club, and I knew him very well. I called one day at the embassy with an American living in Europe to ask for a favor for this fellow countryman. The embassy was overwhelmed with Americans asking favors, so Hoppin, without looking at me or waiting for the request, at once brought out his formula for sliding his visitors on an inclined plane into the street. He said: "Every American—and there are thousands of them—who comes to London visits the embassy. They all want to be invited to Buckingham Palace or to have cards to the House of Lords or the House of Commons. Our privileges in that respect are very few, so few that we can satisfy hardly anybody. Why Americans, when there is so much to see in this old country from which our ancestry came, and with whose literature we are so familiar, should want to try to get into Buckingham Palace or the Houses of Parliament is incomprehensible. There is a very admirable cattle show at Reading. I have a few tickets and will give them to you, gentlemen, gladly. You will find the show exceedingly interesting."

I took the tickets, but if there is anything of which I am not a qualified judge, it is prize cattle. That night, at a large dinner given by a well-known English host, my friend Hoppin was present, and at once greeted me with warm cordiality. Of course, he had no recollections of the morning meeting. Our host, as usual when a new American is present, wanted to know if I had any fresh American stories, and I told with some exaggeration and embroidery the story of the Reading cattle show. Dear old Hoppin was considerably embarrassed at the chafing he received, but took it in good part, and thereafter the embassy was entirely at my service.

Mr. Edward J. Phelps was an extraordinary success.

He was a great lawyer, and the Chief Justice of the Supreme Court of the United States told me that there was no one who appeared before that Court whose arguments were more satisfactory and convincing than those of Mr. Phelps. He had the rare distinction of being a frequent guest at the Benchers' dinners in London. One of the English judges told me that at a Benchers' dinner the judges were discussing a novel point which had arisen in one of the cases recently before them. He said that in the discussion in which Mr. Phelps was asked to participate, the view which the United States minister presented was so forcible that the decision, which had been practically agreed upon, was changed to meet Mr. Phelps's view. I was at several of Mr. Phelps's dinners. They were remarkable gatherings of the best in almost every department of English life.

At one of his dinners I had a delightful talk with Browning, the poet. Browning told me that as a young man he was several times a guest at the famous breakfasts of the poet and banker, Samuel Rogers. Rogers, he said, was most arbitrary at these breakfasts with his guests, and rebuked him severely for venturing beyond the limits within which he thought a young poet should be confined.

Mr. Browning said that nothing gratified him so much as the popularity of his works in the United States. He was especially pleased and also embarrassed by our Browning societies, of which there seemed to be a great many over here. They sent him papers which were read by members of the societies, interpreting his poems. These American friends discovered meanings which had never occurred to him, and were to him an entirely novel view of his own productions. He also mentioned that

every one sent him presents and souvenirs, all of them as appreciations and some as suggestions and help. Among these were several cases of American wine. He appreciated the purpose of the gifts, but the fluid did not appeal to him.

He told me he was a guest at one time at the dinners given to the Shah of Persia. This monarch was a barbarian, but the British Foreign Office had asked and extended to him every possible courtesy, because of the struggle then going on as to whether Great Britain or France or Russia should have the better part of Persia. France and Russia had entertained him with lavish military displays and other governmental functions, which a democratic country like Great Britain could not duplicate. So the Foreign Office asked all who had great houses in London or in the country, and were lavish entertainers, to do everything they could for the Shah.

Browning was present at a great dinner given for the Shah at Stafford House, the home of the Duke of Sutherland, and the finest palace in London. Every guest was asked, in order to impress the Shah, to come in all the decorations to which they were entitled. The result was that the peers came in their robes, which they otherwise would not have thought of wearing on such an occasion, and all others in the costumes of honor significant of their rank. Browning said he had received a degree at Oxford and that entitled him to a scarlet cloak. He was so out-ranked, because the guests were placed according to rank, that he sat at the foot of the table. The Shah said to his host: "Who is that distinguished gentleman in the scarlet cloak at the other end of the table?" The host answered: "That is one of our greatest poets." "That is no place for a poet," remarked the Shah; "bring him

up here and let him sit next to me." So at the royal command the poet took the seat of honor. The Shah said to Browning: "I am mighty glad to have you near me, for I am a poet myself."

It was at this dinner that Browning heard the Shah say to the Prince of Wales, who sat at the right of the Shah: "This is a wonderful palace. Is it royal?" The Prince answered: "No, it belongs to one of our great noblemen, the Duke of Sutherland." "Well," said the Shah, "let me give you a point. When one of my noblemen or subjects gets rich enough to own a palace like this, I cut off his head and take his fortune."

A very beautiful English lady told me that she was at Ferdinand Rothschild's, where the Shah was being entertained. In order to minimize his acquisitive talents, the wonderful treasures of Mr. Rothschild's house had been hidden. The Shah asked for an introduction to this lady and said to her: "You are the most beautiful woman I have seen since I have been in England. I must take you home with me." "But," she said, "Your Majesty, I am married." "Well," he replied, "bring your husband along. When we get to Teheran, my capital, I will take care of him."

Mr. Phelps's talent as a speaker was quite unknown to his countrymen before he went abroad. While he was a minister he made several notable addresses, which aroused a great deal of interest and admiration in Great Britain. He was equally happy in formal orations and in the field of after-dinner speeches. Mrs. Phelps had such a phenomenal success socially that, when her husband was recalled and they left England, the ladies of both the great parties united, and through Lady Rosebery, the leader of the Liberal, and Lady Salisbury, of

the Conservative, women, paid her a very unusual and complimentary tribute.

During John Hay's term as United States minister to Great Britain my visits to England were very delightful. Hay was one of the most charming men in public life of his period. He had won great success in journalism, as an author, and in public service. At his house in London one would meet almost everybody worth while in English literary, public, and social life.

In the hours of conversation with him, when I was posting him on the latest developments in America, his comments upon the leading characters of the time were most racy and witty. Many of them would have embalmed a statesman, if the epigram had been preserved, like a fly in amber. He had officially a very difficult task during the Spanish War. The sympathies of all European governments were with Spain. This was especially true of the Kaiser and the German Government. It was Mr. Hay's task to keep Great Britain neutral and prevent her joining the general alliance to help Spain, which some of the continental governments were fomenting.

Happily, Mr. Balfour, the British foreign minister, was cordially and openly our friend. He prevented this combination against the United States.

During part of my term as a senator John Hay was secretary of state. To visit his office and have a discussion on current affairs was an event to be remembered. He made a prediction, which was the result of his own difficulties with the Senate, that on account of the two-thirds majority necessary for the ratification of a treaty, no important treaty sent to the Senate by the president would ever again be ratified. Happily this gloomy view has not turned out to be entirely correct.

Mr. Hay saved China, in the settlement of the indemnities arising out of the Boxer trouble, from the greed of the great powers of Europe. One of his greatest achievements was in proclaiming the open door for China and securing the acquiescence of the great powers. It was a bluff on his part, because he never could have had the active support of the United States, but he made his proposition with a confidence which carried the belief that he had no doubt on that subject. He was fortunately dealing with governments who did not understand the United States and do not now. With them, when a foreign minister makes a serious statement of policy, it is understood that he has behind him the whole military, naval, and financial support of his government. But with us it is a long road and a very rocky one, before action so serious, with consequences so great, can receive the approval of the war-making power in Congress.

I called on Hay one morning just as Cassini, the Russian ambassador, was leaving. Cassini was one of the shrewdest and ablest of diplomats in the Russian service. It was said that for twelve years he had got the better of all the delegations at Peking and controlled that extraordinary ruler of China, the dowager queen. Cassini told me that from his intimate associations with her he had formed the opinion that she was quite equal to Catherine of Russia, whom he regarded as the greatest woman sovereign who ever lived.

Hay said to me: "I have just had a very long and very remarkable discussion with Cassini. He is a revelation in the way of secret diplomacy. He brought to me the voluminous instructions to him of his government on our open-door policy. After we had gone over them

carefully, he closed his portfolio and, pushing it aside, said: 'Now, Mr. Secretary, listen to Cassini.' He immediately presented an exactly opposite policy from the one in the instructions, and a policy entirely favorable to us, and said: 'That is what my government will do.'" It was a great loss to Russian diplomacy when he died so early.

As senator I did all in my power to bring about the appointment of Whitelaw Reid as ambassador to Great Britain. He and I had been friends ever since his beginning in journalism in New York many years before. Reid was then the owner and editor of the *New York Tribune*, and one of the most brilliant journalists in the country. He was also an excellent public speaker. His long and intimate contact with public affairs and intimacy with public men ideally fitted him for the appointment. He had already served with great credit as ambassador to France.

The compensation of our representatives abroad always has been and still is entirely inadequate to enable them to maintain, in comparison with the representatives of other governments, the dignity of their own country. All the other great powers at the principal capitals maintain fine residences for their ambassadors, which also is the embassy. Our Congress, except within the last few years, has always refused to make this provision. The salary which we pay is scarcely ever more than one-third the amount paid by European governments in similar service.

I worked hard while in the Senate to improve this situation because of my intimate knowledge of the question. When I first began the effort I found there was a very strong belief that the whole foreign service was an

unnecessary expense. When Mr. Roosevelt first became president, and I had to see him frequently about diplomatic appointments, I learned that this was his view. He said to me: "This foreign business of the government, now that the cable is perfected, can be carried on between our State Department and the chancellery of any government in the world. Nevertheless, I am in favor of keeping up the diplomatic service. All the old nations have various methods of rewarding distinguished public servants. The only one we have is the diplomatic service. So when I appoint a man ambassador or minister, I believe that I am giving him a decoration, and the reason I change ambassadors and ministers is that I want as many as possible to possess it."

The longer Mr. Roosevelt remained president, and the closer he came to our foreign relations, the more he appreciated the value of the personal contact and intimate knowledge on the spot of an American ambassador or minister.

Mr. Reid entertained more lavishly and hospitably than any ambassador in England ever had, both at his London house and at his estate in the country. He appreciated the growing necessity to the peace of the world and the progress of civilization of closer union of English-speaking peoples. At his beautiful and delightful entertainments Americans came in contact with Englishmen under conditions most favorable for the appreciation by each of the other. The charm of Mr. and Mrs. Whitelaw Reid's hospitality was so genuine, so cordial, and so universal, that to be their guest was an event for Americans visiting England. There is no capital in the world where hospitality counts for so much as in London, and no country where the house-party brings

people together under such favorable conditions. Both the city and the country homes of Mr. and Mrs. Reid were universities of international good-feeling. Mr. Reid, on the official side, admirably represented his country and had the most intimate relations with the governing powers of Great Britain.

I recall with the keenest pleasure how much my old friend, Joseph H. Choate, did to make each one of my visits to London during his term full of the most charming and valuable recollections. His dinners felt the magnetism of his presence, and he showed especial skill in having, to meet his American guests, just the famous men in London life whom the American desired to know.

Choate was a fine conversationalist, a wit and a humorist of a high order. His audacity won great triumphs, but if exercised by a man less endowed would have brought him continuously into trouble. He had the faculty, the art, of so directing conversation that at his entertainments everybody had a good time, and an invitation always was highly prized. He was appreciated most highly by the English bench and bar. They recognized him as the leader of his profession in the United States. They elected him a Bencher of the Middle Temple, the first American to receive that honor after an interval of one hundred and fifty years. Choate's witticisms and repartees became the social currency of dinner-tables in London and week-end parties in the country.

Choate paid little attention to conventionalities, which count for so much and are so rigidly enforced, especially in royal circles. I had frequently been at receptions, garden-parties, and other entertainments at Buckingham Palace in the time of Queen Victoria and also of King

Edward. At an evening reception the diplomats representing all the countries in the world stand in a solemn row, according to rank and length of service. They are covered with decorations and gold lace. The weight of the gold lace on some of the uniforms of the minor powers is as great as if it were a coat of armor. Mr. Choate, under regulations of our diplomatic service, could only appear in an ordinary dress suit.

While the diplomats stand in solemn array, the king and queen go along the line and greet each one with appropriate remarks. Nobody but an ambassador and minister gets into that brilliant circle. On one occasion Mr. Choate saw me standing with the other guests outside the charmed circle and immediately left the diplomats, came to me, and said: "I am sure you would like to have a talk with the queen." He went up to Her Majesty, stated the case and who I was, and the proposition was most graciously received. I think the royalties were pleased to have a break in the formal etiquette. Mr. Choate treated the occasion, so far as I was concerned, as if it had been a reception in New York or Salem, and a distinguished guest wanted to meet the hosts. The gold-laced and bejewelled and highly decorated diplomatic circle was paralyzed.

Mr. Choate's delightful personality and original conversational powers made him a favorite guest everywhere, but he also carried to the platform the distinction which had won for him the reputation of being one of the finest orators in the United States.

Choate asked at one time when I was almost nightly making speeches at some entertainment: "How do you do it?" I told him I was risking whatever reputation I had on account of very limited preparation, that I did

not let these speeches interfere at all with my business, but that they were all prepared after I had arrived home from my office late in the afternoon. Sometimes they came easy, and I reached the dinner in time; at other times they were more difficult, and I did not arrive till the speaking had begun. Then he said: "I enjoy making these after-dinner addresses more than any other work. It is a perfect delight for me to speak to such an audience, but I have not the gift of quick and easy preparation. I accept comparatively few of the constant invitations I receive, because when I have to make such a speech I take a corner in the car in the morning going to my office, exclude all the intruding public with a newspaper and think all the way down. I continue the same process on my way home in the evening, and it takes about three days of this absorption and exclusiveness, with some time in the evenings, to get an address with which I am satisfied."

The delicious humor of these efforts of Mr. Choate and the wonderful way in which he could expose a current delusion, or what he thought was one, and produce an impression not only on his audience but on the whole community, when his speech was printed in the newspapers, was a kind of effort which necessarily required preparation. In all the many times I heard him, both at home and abroad, he never had a failure and sometimes made a sensation.

Among the many interesting characters whom I met on shipboard was Emory Storrs, a famous Chicago lawyer. Storrs was a genius of rare talent as an advocator. He also on occasions would make a most successful speech, but his efforts were unequal. At one session of the National Bar Association he carried off all the

honors at their banquet. Of course, they wanted him the next year, but then he failed entirely to meet their expectations. Storrs was one of the most successful advocates at the criminal bar, especially in murder cases. He rarely failed to get an acquittal for his client. He told me many interesting stories of his experiences. He had a wide circuit, owing to his reputation, and tried cases far distant from home.

I remember one of his experiences in an out-of-the-way county of Arkansas. The hotel where they all stopped was very primitive, and he had the same table with the judge. The most attractive offer for breakfast by the landlady was buckwheat-cakes. She appeared with a jug of molasses and said to the judge: "Will you have a trickle or a dab?" The judge answered: "A dab." She then ran her fingers around the jug and slapped a huge amount of molasses on the judge's cakes. Storrs said: "I think I prefer a trickle." Whereupon she dipped her fingers again in the jug and let the drops fall from them on Storrs's cakes. The landlady was disappointed because her cakes were unpopular with such distinguished gentlemen.

Once Storrs was going abroad on the same ship with me on a sort of semi-diplomatic mission. He was deeply read in English literature and, as far as a stranger could be, familiar with the places made famous in English and foreign classics.

He was one of the factors, as chairman of the Illinois delegation, of the conditions which made possible the nomination of Garfield and Arthur. In the following presidential campaign he took an active and very useful part. Then he brought all the influences that he could use, and they were many, to bear upon President Arthur

to make him attorney-general. Arthur was a strict formalist and could not tolerate the thought of having such an eccentric genius in his Cabinet. Storrs was not only disappointed but hurt that Arthur declined to appoint him.

To make him happy his rich clients—and he had many of them—raised a handsome purse and urged him to make a European trip. Then the president added to the pleasure of his journey by giving him an appointment as a sort of roving diplomat, with special duties relating to the acute trouble then existing in regard to the admission of American cattle into Great Britain. They were barred because of a supposed infectious disease.

Storrs's weakness was neckties. He told me that he had three hundred and sixty-five, a new one for every day. He would come on deck every morning, display his fresh necktie, and receive a compliment upon its color and appropriateness, and then take from his pocket a huge water-proof envelope. From this he would unroll his parchment appointment as a diplomat, and the letters he had to almost every one of distinction in Europe. On the last day, going through the same ceremony, he said to me: "I am not showing you these things out of vanity, but to impress upon you the one thing I most want to accomplish in London. I desire to compel James Russell Lowell, our minister, to give me a dinner."

Probably no man in the world could be selected so antipathetic to Lowell as Emory Storrs. Mr. Lowell told me that he was annoyed that the president should have sent an interloper to meddle with negotiations which he had in successful progress to a satisfactory conclusion. So he invited Storrs to dinner, and then Storrs took no further interest in his diplomatic mission.

Mr. Lowell told me that he asked Storrs to name whoever he wanted to invite. He supposed from his general analysis of the man that Storrs would want the entire royal family. He was delighted to find that the selection was confined entirely to authors, artists, and scientists.

On my return trip Mr. Storrs was again a fellow passenger. He was very enthusiastic over the places of historic interest he had visited, and eloquent and graphic in descriptions of them and of his own intense feelings when he came in contact with things he had dreamed of most of his life.

"But," he said, "I will tell you of my greatest adventure. I was in the picture-gallery at Dresden, and in that small room where hangs Raphael's 'Madonna.' I was standing before this wonderful masterpiece of divine inspiration when I felt the room crowded. I discovered that the visitors were all Americans and all looking at me. I said to them: 'Ladies and gentlemen, you are here in the presence of the most wonderful picture ever painted. If you study it, you can see that there is little doubt but with all his genius Raphael in this work had inspiration from above, and yet you, as Americans, instead of availing yourselves of the rarest of opportunities, have your eyes bent on me. I am only a Chicago lawyer wearing a Chicago-made suit of clothes.'

"A gentleman stepped forward and said: 'Mr. Storrs, on behalf of your countrymen and countrywomen present, I wish to say that you are of more interest to us than all the works of Raphael put together, because we understand that James Russell Lowell, United States Minister to Great Britain, gave you a dinner.'"

One other incident in my acquaintance with Mr. Storrs was original. I heard the story of it both from

him and Lord Coleridge, and they did not differ materially. Lord Coleridge, Chief Justice of England, was a most welcome visitor when he came to the United States. He received invitations from the State Bar Associations everywhere to accept their hospitality. I conducted him on part of his trip and found him one of the most able and delightful of men. He was a very fine speaker, more in our way than the English, and made a first-class impression upon all the audiences he addressed.

At Chicago Lord Coleridge was entertained by the Bar Association of the State of Illinois. Storrs, who was an eminent member of the bar of that State, came to him and said: "Now, Lord Coleridge, you have been entertained by the Bar Association. I want you to know the real men of the West, the captains of industry who have created this city, built our railroads, and made the Great West what it is." Coleridge replied that he did not want to go outside bar associations, and he could not think of making another speech in Chicago. Storrs assured him it would be purely a private affair and no speeches permitted.

The dinner was very late, but when they sat down Lord Coleridge noticed a distinguished-looking gentleman, instead of eating his dinner, correcting a manuscript. He said: "Mr. Storrs, I understood there was to be no speaking." "Well," said Storrs, "you can't get Americans together unless some one takes the floor. That man with the manuscript is General and Senator John A. Logan, one of our most distinguished citizens." Just then a reporter came up to Storrs and said: "Mr. Storrs, we have the slips of your speech in our office, and it is now set up with the laughter and applause in their proper places. The editor sent me up to see if you

wanted to add anything." Of course Lord Coleridge was in for it and had to make another speech.

The cause of the lateness of the dinner is the most original incident that I know of in historic banquets. Storrs received great fees and had a large income, but was very careless about his business matters. One of his creditors obtained a judgment against him. The lawyer for this creditor was a guest at this dinner and asked the landlord of the hotel if the dinner had been paid for in advance. The landlord answered in the affirmative, and so the lawyer telephoned to the sheriff, and had the dinner levied upon. The sheriff refused to allow it to be served until the judgment was satisfied. There were at least a hundred millions of dollars represented among the guests, packers, elevator men, real-estate operators, and grain operators, but millionaires and multimillionaires in dress suits at a banquet never have any money on their persons. So it was an hour or more before the sheriff was satisfied. Lord Coleridge was intensely amused and related the adventure with great glee.

Several years afterwards Lord Coleridge had some difficulty in his family which came into the courts of England. I do not remember just what it was all about, but Storrs, in reading the gossip which came across the cable, decided against the chief justice. Lord Coleridge told me he received from Storrs a cable reading something like this: "I have seen in our papers about your attitude in the suit now pending. I therefore inform you that as far as possible I withdraw the courtesies which I extended to you in Chicago." In this unique way Storrs cancelled the dinner which was given and seized by the sheriff years ago.

I met Storrs many times, and he was always not only charming but fascinating. He was very witty, full of anecdotes, and told a story with dramatic effect. Except for his eccentricities he might have taken the highest place in his profession. As it was, he acquired such fame that an admirer has written a very good biography of him.

XVII

GOVERNORS OF NEW YORK STATE

There is nothing more interesting than to see the beginning of a controversy which makes history. It is my good fortune to have been either a spectator or a participant on several occasions.

William M. Tweed was at the height of his power. He was the master of New York City, and controlled the legislature of the State. The rapid growth and expansion of New York City had necessitated a new charter, or very radical improvements in the existing one. Tweed, as chairman of the Senate committee on cities, had staged a large and spectacular hearing at the State Capitol at Albany. It was attended by a large body of representative citizens from the metropolis. Some spoke for civic and commercial bodies, and there were also other prominent men who were interested. Everybody interested in public affairs in Albany at the time attended. Not only was there a large gathering of legislators, but there were also in the audience judges, lawyers, and politicians from all parts of the State.

After hearing from the Chamber of Commerce and various reform organizations, Mr. Samuel J. Tilden came forward with a complete charter. It was soon evident that he was better prepared and informed on the subject than any one present. He knew intimately the weaknesses of the present charter, and had thought out with great care and wisdom what was needed in new legislation.

From the contemptuous way in which Senator Tweed treated Mr. Tilden, scouted his plans, and ridiculed his propositions, it was evident that the whole scheme had been staged as a State-wide spectacle to humiliate and end the political career of Samuel J. Tilden.

In answer to Tilden's protest against this treatment, Tweed loudly informed him that he represented no one but himself, that he had neither influence nor standing in the city, that he was an intermeddler with things that did not concern him, and a general nuisance.

Mr. Tilden turned ashy white, and showed evidences of suppressed rage and vindictiveness more intense than I ever saw in any one before, and abruptly left the hearing.

I knew Mr. Tilden very well, and from contact with him in railroad matters had formed a high opinion of his ability and acquirements. He had a keen, analytic mind, tireless industry, and a faculty for clarifying difficulties and untangling apparently impossible problems to a degree that amounted to genius.

In reference to what had happened, I said to a friend: "Mr. Tweed must be very confident of his position and of his record, for he has deliberately defied and invited the attacks of a relentless and merciless opponent by every insult which could wound the pride and incite the hatred of the man so ridiculed and abused. Mr. Tilden is a great lawyer. He has made a phenomenal success financially, he has powerful associates in financial and business circles, and is master of his time for any purpose to which he chooses to apply it."

It was not long before one of the most remarkable and exhaustive investigations ever conducted by an individual into public records, books, ledgers, bank-accounts,

and contracts, revealed to the public the whole system of governing the city. This master mind solved the problems so that they were plain to the average citizen as the simplest sum in arithmetic, or that two and two make four.

The result was the destruction of the power of Tweed and his associates, of their prosecution and conviction, and of the elevation of Samuel J. Tilden to a State and national figure of the first importance. He not only became in the public mind a leader of reforms in government, municipal, State, and national, but embodied in the popular imagination *reform itself*.

Mr. Tilden carried this same indefatigable industry and power of organization into a canvass for governor. His agencies reached not only the counties and towns, but the election districts of the State. He called into existence a new power in politics—the young men. The old leaders were generally against him, but he discovered in every locality ambitious, resourceful, and courageous youngsters and made them his lieutenants. This unparalleled preparation made him the master of his party and the governor of the State.

After the election he invited me to come and see him at the Executive Mansion in Albany, and in the course of the conversation he said: "In your speeches in the campaign against me you were absolutely fair, and as a fair and open-minded opponent I want to have a frank talk. I am governor of the State, elected upon an issue which is purely local. The Democratic party is at present without principles or any definite issue on which to appeal to the public. If I am to continue in power we must find an issue. The Erie Canal is not only a State affair, but a national one. Its early construction opened

the great Northwest, and it was for years the only outlet to the seaboard. The public not only in the State of New York, but in the West, believes that there has been, and is, corruption in the construction and management of the Canal. This great waterway requires continuing contracts for continuing repairs, and the people believe that these contracts are given to favorites, and that the work is either not performed at all or is badly done. I believe that matter ought to be looked into and the result will largely justify the suspicion prevalent in the public mind. I want your judgment on the question and what will be the effect upon me."

I then frankly answered him: "Governor, there is no doubt it will be a popular movement, but you know that the Canal contractors control the machinery of your party, and I cannot tell what the effect of that may be upon what you desire, which is a second term."

"Those contractors," he said, "are good Democrats, and their ability to secure the contracts depends upon Democratic supremacy. A prosecution against them has been tried so often that they have little fear of either civil or criminal actions, and I think they will accept the issue as the only one which will keep their party in power."

It is a part of the history of the time that he made the issue so interesting that he became a national figure of the first importance and afterwards the candidate of his party for President of the United States. Not only that, but he so impressed the people that popular judgment is still divided as to whether or not he was rightfully elected president.

Once I was coming from the West after a tour of inspection, and when we left Albany the conductor told

me that Governor Tilden was on the train. I immediately called and found him very uncomfortable, because he said he was troubled with boils. I invited him into the larger compartment which I had, and made him as comfortable as possible. His conversation immediately turned upon the second term and he asked what I, as a Republican, thought of his prospects as the result of his administration. We had hardly entered upon the subject when a very excited gentleman burst into the compartment and said: "Governor, I have been looking for you everywhere. I went to your office at the Capitol and to the Executive Mansion, but learned you were here and barely caught the train. You know who I am." (The governor knew he was mayor of a city.) "I want to see you confidentially."

The governor said to him: "I have entire confidence in my Republican friend here. You can trust him. Go on."

I knew the mayor very well, and under ordinary conditions he would have insisted on the interview with the governor being private and personal. But he was so excited and bursting with rage that he went right on. The mayor fairly shouted: "It is the station agent of the New York Central Railroad in our city of whom I complain. He is active in politics and controls the Democratic organization in our county. He is working to prevent myself and my friends and even ex-Governor Seymour from being delegates to the national convention. It is to the interest of our party, in fact, I may say, the salvation of our party in our county that this New York Central agent be either removed or silenced, and I want you to see Mr. Vanderbilt on the subject."

The governor sympathized with the mayor and dis-

missed him. Then in a quizzical way he asked me: "Do you know this agent?"

"Yes," I answered.

"What do you think of him?"

"I know nothing about his political activities," I answered, "but he is one of the most efficient employees of the company in the State."

"Well," said the governor, "I am glad to hear you say so. He was down to see me the other night; in fact, I sent for him, and I formed a very high opinion of his judgment and ability."

As a matter of fact, the governor had selected him to accomplish this very result which the mayor had said would ruin the party in the county.

When the New York Democratic delegation left the city for the Democratic national convention they had engaged a special train to leave from the Grand Central Station. I went down to see that the arrangements were perfected for its movement. It was a hilarious crowd, and the sides of the cars were strung with Tilden banners.

Mr. Tilden was there also to see them off. After bidding good-by to the leaders, and with a whispered conference with each, the mass of delegates and especially reporters, of whom there was a crowd, wished to engage him in conversation. He spied me and immediately hurried me into one of the alcoves, apparently for a private conversation. The crowd, of course, gathered around, anxious to know what it was all about. He asked me a few questions about the health of my family and then added: "Don't leave me. I want to avoid all these people, and we will talk until the train is off and the crowd disperses."

Life was a burden for me the rest of the day and evening, made so by the newspaper men and Democratic politicians trying to find out what the mysterious chief had revealed to me in the alcove of the Grand Central.

I was very much gratified when meeting him after the fierce battles for the presidency were over, to have him grasp me by the hand and say: "You were about the only one who treated me absolutely fairly during the campaign."

I love little incidents about great men. Mr. Tilden was intensely human and a great man.

Doctor Buckley, who was at the head of the Methodist Book Concern in New York, and one of the most delightful of men, told me that there came into his office one day a Methodist preacher from one of the mining districts of Pennsylvania, who said to him: "My church burned down. We had no insurance. We are poor people, and, therefore, I have come to New York to raise money to rebuild it."

The doctor told him that New York was overrun from all parts of the country with applicants for help, and that he thought he would have great difficulty in his undertaking.

"Well," the preacher said, "I am going to see Mr. Tilden."

Doctor Buckley could not persuade him that his mission was next to impossible, and so this rural clergyman started for Gramercy Park. When he returned he told the doctor of his experience.

"I rang the bell," he said, "and when the door was opened I saw Governor Tilden coming down the stairs. I rushed in and told him hastily who I was before the man at the door could stop me, and he invited me into

his library. I stated my mission, and he said he was so overwhelmed with applications that he did not think he could do anything. 'But, governor,' I said, 'my case differs from all others. My congregation is composed of miners, honest, hardworking people. They have hitherto been Republicans on the protection issue, but they were so impressed by you as a great reformer that they all voted for you in the last election.' The governor said: 'Tell that story again.' So I started again to tell him about my church, but he interrupted me, saying: 'Not that, but about the election.' So I told him again about their having, on account of their admiration for him as a reformer, turned from the Republican party and voted the Democratic ticket. Then the governor said: 'Well, I think you have a most meritorious case, and so I will give you all I have.'"

Doctor Buckley interrupted him hastily, saying: "Great heavens, are you going to build a cathedral?"

"No," answered the clergyman; "all he had in his pocket was two dollars and fifty cents."

Governor Tilden had many followers and friends whose admiration for him amounted almost to adoration. They believed him capable of everything, and they were among the most intelligent and able men of the country.

John Bigelow, journalist, author, and diplomat, was always sounding his greatness, both with tongue and pen. Abram S. Hewitt was an equally enthusiastic friend and admirer. Both of these gentlemen, the latter especially, were, I think, abler than Mr. Tilden, but did not have his hypnotic power.

I was dining one night with Mr. Hewitt, whose dinners were always events to be remembered, when Mr.

Tilden became the subject of discussion. After incidents illustrating his manifold distinctions had been narrated, Mr. Hewitt said that Mr. Tilden was the only one in America and outside of royalties in Europe who had some blue-labelled Johannisberger. This famous wine from the vineyards of Prince Metternich on the Rhine was at that time reported to be absorbed by the royal families of Europe.

Our host said: "The bouquet of this wonderful beverage is unusually penetrating and diffusing, and a proof is that one night at a dinner in the summer, with the windows all open, the guests noticed this peculiar aroma in the air. I said to them that Governor Tilden had opened a bottle of his Johannisberger."

The governor's residence was on the other side of Gramercy Park from Mr. Hewitt's. The matter was so extraordinary that everybody at the table went across the park, and when they were admitted they found the governor in his library enjoying his bottle of blue-labelled Johannisberger.

When Mr. Tilden was elected governor, my friend, General Husted, was speaker of the assembly, which was largely Republican. The governor asked General Husted to come down in the evening, because he wanted to consult him about the improvements and alterations necessary for the Executive Mansion, and to have the speaker secure the appropriation. During the discussion the governor placed before the speaker a bottle of rare whiskey, with the usual accompaniments. In front of the governor was a bottle of his Johannisberger and a small liqueur glass, a little larger than a thimble, from which the governor would from time to time taste a drop of this rare and exquisite fluid. The general, after a

while, could not restrain his curiosity any longer and said: "Governor, what is that you are drinking?"

The governor explained its value and the almost utter impossibility of securing any.

"Well, governor," said Speaker Husted, "I never saw any before and I think I will try it." He seized the bottle, emptied it in his goblet and announced to the astonished executive that he was quite right in his estimate of its excellence.

The governor lost a bottle of his most cherished treasure but received from the Republican legislature all the appropriation he desired for the Executive Mansion.

It has been my good fortune to know well the governors of our State of New York, commencing with Edmund D. Morgan. With many of them I was on terms of close intimacy. I have already spoken of Governors Seymour, Fenton, Dix, Tilden, Cleveland, and Roosevelt. It might be better to confine my memory to those who have joined the majority.

Lucius Robinson was an excellent executive of the business type, as also were Alonzo B. Cornell and Levi P. Morton. Frank S. Black was in many ways original. He was an excellent governor, but very different from the usual routine. In the Spanish-American War he had a definite idea that the National Guard of our State should not go into the service of the United States as regiments, but as individual volunteers. The Seventh Regiment, which was the crack organization of the Guard, was severely criticised because they did not volunteer. They refused to go except as the Seventh Regiment, and their enemies continued to assail them as tin soldiers.

General Louis Fitzgerald and Colonel Appleton came

to me very much disturbed by this condition. General Russell A. Alger, secretary of war, was an intimate friend of mine, and I went to Washington and saw him and the president on the acute condition affecting the reputation of the Seventh Regiment.

General Alger said: "We are about to make a desperate assault upon the fortifications of Havana. Of course there will be many casualties and the fighting most severe. Will the Seventh join that expedition?"

The answer of General Fitzgerald and Colonel Appleton was emphatic that the Seventh would march with full ranks on the shortest possible notice. Governor Black would not change his view of how the National Guard should go, and so the Seventh was never called. It seems only proper that I should make a record of this patriotic proposition made by this organization.

Governor Black developed after he became governor, and especially after he had retired from office, into a very effective orator. He had a fine presence and an excellent delivery. He was fond of preparing epigrams, and became a master in this sort of literature. When he had occasion to deliver an address, it would be almost wholly made up of these detached gems, each perfect in itself. The only other of our American orators who cultivated successfully this style of speech was Senator John J. Ingalls, of Kansas. It is a style very difficult to attain or to make successful.

David B. Hill was an extraordinary man in many ways. He was governor for three terms and United States senator for one. His whole life was politics. He was a trained lawyer and an excellent one, but his heart and soul was in party control, winning popular elections, and the art of governing. He consolidated the rural ele-

ments of his party so effectively that he compelled Tammany Hall to submit to his leadership and to recognize him as its master.

For many years, and winning in every contest, Governor Hill controlled the organization and the policies of the Democratic party of the State of New York. In a plain way he was an effective speaker, but in no sense an orator. He contested with Cleveland for the presidency, but in that case ran against a stronger and bigger personality than he had ever encountered, and lost. He rose far above the average and made his mark upon the politics of his State and upon the United States Senate while he was a member.

Levi P. Morton brought to the governorship business ability which had made him one of the great merchants and foremost bankers. As Governor of the State of New York, United States Minister to France, Congressman, and Vice-President of the United States, he filled every position with grace, dignity, and ability. A lovable personality made him most popular.

Roswell P. Flower, after a successful career as a banker, developed political ambitions. He had a faculty of making friends, and had hosts of them. He was congressman and then governor. While the Democratic organization was hostile to him, he was of the Mark Hanna type and carried his successful business methods into the canvass for the nomination and the campaign for the election and was successful.

Passing through Albany while he was governor, I stopped over to pay my respects. I was very fond of him personally. When I rang the door-bell of the Executive Mansion and inquired for the governor, the servant said: "The governor is very ill and can see nobody."

Then I asked him to tell the governor, when he was able to receive a message, that Chauncey Depew called and expressed his deep regret for his illness. Suddenly the governor popped out from the parlor and seized me by the hand and said: "Chauncey, come in. I was never so glad to see anybody in my life."

He told me the legislature had adjourned and left on his hands several thousands of thirty-days bills—that is, bills on which he had thirty days to sign or veto, or let them become laws by not rejecting them. So he had to deny himself to everybody to get the leisure to read them over and form decisions.

"Do you know, Chauncey," he said, "this is a new business to me. Most of these bills are on subjects which I never have examined, studied, or thought about. It is very difficult to form a wise judgment, and I want to do in each case just what is right." For the moment he became silent, seemingly absorbed by anxious thoughts about these bills. Then suddenly he exclaimed: "By the way, Chauncey, you've done a great deal of thinking in your life, and I never have done any except on business. Does intense thinking affect you as it does me, by upsetting your stomach and making you throw up?"

"No, governor," I answered; "if it did I fear I would be in a chronic state of indigestion."

While he was governor he canvassed the State in a private car and made many speeches. In a plain, homely man-to-man talk he was very effective on the platform. His train stopped at a station in a Republican community where there were few Democrats, while I was addressing a Republican meeting in the village. When I had finished my speech I said to the crowd, which was a large one: "Governor Flower is at the sta-

tion, and as I passed he had very few people listening to him. Let us all go over and give him an audience."

The proposition was received with cheers. I went ahead, got in at the other end of the governor's car from the one where he was speaking from the platform. As this Republican crowd began to pour in, it was evident as I stood behind him without his knowing of my presence, that he was highly delighted. He shouted: "Fellow citizens, I told you they were coming. They are coming from the mountains, from the hills, and from the valleys. It is the stampede from the Republican party and into our ranks and for our ticket. This is the happiest evidence I have received of the popularity of our cause and the success of our ticket."

Standing behind him, I made a signal for cheers, which was heartily responded to, and the governor, turning around, saw the joke, grasped me cordially by the hand, and the whole crowd, including the veteran and hardened Democrats on the car, joined in the hilarity of the occasion.

He came to me when he was running for the second time for Congress, and said that some of the people of his district were anxious for me to deliver an address for one of their pet charities, and that the meeting would be held in Harlem, naming the evening. I told him I would go. He came for me in his carriage, and I said: "Governor, please do not talk to me on the way up. I was so busy that I have had no time since I left my office this afternoon to prepare this address, and I want every minute while we are riding to the meeting."

The meeting was a large one. The governor took the chair and introduced me in this original way: "Ladies and gentlemen," he said, "I want to say about Chauncey

Depew, whom I am now going to introduce to you as the lecturer of the evening, that he is no Demosthenes, because he can beat Demosthenes out of sight. He prepared his speech in the carriage in which I was bringing him up here, and he don't have, like the old Greek, to chew pebble-stones in order to make a speech."

Governor Flower in a conservative way was a successful trader in the stock market. When he felt he had a sure point he would share it with a few friends. He took special delight in helping in this way men who had little means and no knowledge of the art of money-making. There were a great many benefited by his bounty.

I was dining one night with the Gridiron Club at Washington, and before me was a plate of radishes. The newspaper man next to me asked if I would object to having the radishes removed.

I said: "There is no odor or perfume from them. What is the matter with the radishes?"

After they were taken away he told me his story. "Governor Flower," he said, "was very kind to me, as he invariably was to all newspaper men. He asked me one day how much I had saved in my twenty years in journalism. I told him ten thousand dollars. He said: 'That is not enough for so long a period. Let me have the money.' So I handed over to him my bank-account. In a few weeks he told me that my ten thousand dollars had become twenty, and I could have them if I wished. I said: 'No, you are doing far better than I could. Keep it.' In about a month or more my account had grown to thirty thousand dollars. Then the governor on a very hot day went fishing somewhere off the Long Island coast. He was a very large, heavy man, became over-

heated, and on his return drank a lot of ice-water and ate a bunch of radishes. He died that afternoon. There was a panic in the stocks which were his favorites the next day, and they fell out of sight. The result was that I lost my fortune of ten thousand dollars and also my profit of twenty. Since then the sight of a radish makes me sick."

XVIII

FIFTY-SIX YEARS WITH THE NEW YORK CENTRAL RAILROAD COMPANY

Heredity has much to do with a man's career. The village of Peekskill-on-the-Hudson, about forty miles from New York, was in the early days the market-town of a large section of the surrounding country, extending over to the State of Connecticut. It was a farming region, and its products destined for New York City were shipped by sloops on the Hudson from the wharfs at Peekskill, and the return voyage brought back the merchandise required by the country.

My father and his brother owned the majority of the sloops engaged in this, at that time, almost the only transportation. The sloops were succeeded by steamboats in which my people were also interested. When Commodore Vanderbilt entered into active rivalry with the other steamboat lines between New York and Albany, the competition became very serious. Newer and faster boats were rapidly built. These racers would reach the Bay of Peekskill in the late afternoon, and the younger population of the village would be on the banks of the river, enthusiastically applauding their favorites. Among well-known boats whose names and achievements excited as much interest and aroused as much partisanship and sporting spirit as do now famous race-horses or baseball champions, were the following: *Mary Powell*, *Dean Richmond*, *The Alida*, and *The Hendrick Hudson*.

I remember as if it were yesterday when the Hudson River Railroad had reached Peekskill, and the event was locally celebrated. The people came in as to a county fair from fifty miles around. When the locomotive steamed into the station many of those present had never seen one. The engineer was continuously blowing his whistle to emphasize the great event. This produced much consternation and confusion among the horses, as all farmers were there with their families in carriages or wagons.

I recall one team of young horses which were driven to frenzy; their owner was unable to control them, but he kept them on the road while they ran away with a wild dash over the hills. In telling this story, as illustrating how recent is railway development in the United States, at a dinner abroad, I stated that as far as I knew and believed, those horses were so frightened that they could not be stopped and were still running. A very successful and serious-minded captain of industry among the guests sternly rebuked me by saying: "Sir, that is impossible; horses were never born that could run for twenty-five years without stopping." American exaggeration was not so well known among our friends on the other side then as it is now.

As we boys of the village were gathered on the banks of the Hudson cheering our favorite steamers, or watching with eager interest the movements of the trains, a frequent discussion would be about our ambitions in life. Every young fellow would state a dream which he hoped but never expected to be realized. I was charged by my companions with having the greatest imagination and with painting more pictures in the skies than any of them. This was because I stated that in politics, for I was

a great admirer of William H. Seward, then senator from New York, I expected to be a United States senator, and in business, because then the largest figure in the business world was Commodore Vanderbilt, I hoped to become president of the Hudson River Railroad. It is one of the strangest incidents of what seemed the wild imaginings of a village boy that in the course of long years both these expectations were realized.

When I entered the service of the railroad on the first of January, 1866, the Vanderbilt system consisted of the Hudson River and Harlem Railroads, the Harlem ending at Chatham, 128 miles, and the Hudson River at Albany, 140 miles long. The Vanderbilt system now covers 20,000 miles. The total railway mileage of the whole United States at that time was 36,000, and now it is 261,000 miles.

My connection with the New York Central Railroad covers practically the whole period of railway construction, expansion, and development in the United States. It is a singular evidence of the rapidity of our country's growth and of the way which that growth has steadily followed the rails, that all this development of States, of villages growing into cities, of scattered communities becoming great manufacturing centres, of an internal commerce reaching proportions where it has greater volume than the foreign interchanges of the whole world, has come about during a period covered by the official career of a railroad man who is still in the service: an attorney in 1866, a vice-president in 1882, president in 1885, chairman of the board of directors in 1899, and still holds that office.

There is no such record in the country for continuous service with one company, which during the whole period

has been controlled by one family. This service of more than half a century has been in every way satisfactory. It is a pleasure to see the fourth generation, inheriting the ability of the father, grandfather, and great-grandfather, still active in the management.

I want to say that in thus linking my long relationship with the railroads to this marvellous development, I do not claim to have been better than the railway officers who during this time have performed their duties to the best of their ability. I wish also to pay tribute to the men of original genius, of vision and daring, to whom so much is due in the expansion and improvement of the American railway systems.

Commodore Vanderbilt was one of the most remarkable men our country has produced. He was endowed with wonderful foresight, grasp of difficult situations, ability to see opportunities before others, to solve serious problems, and the courage of his convictions. He had little education or early advantages, but was eminently successful in everything he undertook. As a boy on Staten Island he foresaw that upon transportation depended the settlement, growth, and prosperity of this nation. He began with a small boat running across the harbor from Staten Island to New York. Very early in his career he acquired a steamboat and in a few years was master of Long Island Sound. He then extended his operations to the Hudson River and speedily acquired the dominating ownership in boats competing between New York and Albany.

When gold was discovered in California he started a line on the Atlantic side of the Isthmus of Darien and secured from the government of Nicaragua the privilege of crossing the Isthmus for a transportation system

through its territory, and then established a line of steamers on the Pacific to San Francisco. In a short time the old-established lines, both on the Atlantic and the Pacific, were compelled to sell out to him. Then he entered the transatlantic trade, with steamers to Europe.

With that vision which is a gift and cannot be accounted for, he decided that the transportation work of the future was on land and in railroads. He abandoned the sea, and his first enterprise was the purchase of the New York and Harlem Railroad, which was only one hundred and twenty-eight miles long. The road was bankrupt and its road-bed and equipment going from bad to worse. The commodore reconstructed the line, re-equipped it, and by making it serviceable to its territory increased its traffic and turned its business from deficiency into profit. This was in 1864. The commodore became president, and his son, William H. Vanderbilt, vice-president. He saw that the extension of the Harlem was not advisable, and so secured the Hudson River Railroad, running from New York to Albany, and became its president in 1865. It was a few months after this when he and his son invited me to become a member of their staff.

The station of the Harlem Railroad in the city of New York was at that time at Fourth Avenue and Twenty-sixth Street, and that of the Hudson River Railroad at Chambers Street, near the North River.

In a few years William H. Vanderbilt purchased the ground for the Harlem Railroad Company, where is now located the Grand Central Terminal, and by the acquisition by the New York Central and Hudson River Railroad of the Harlem Railroad the trains of the New York

Central were brought around into the Grand Central Station.

In 1867, two years after Mr. Vanderbilt had acquired the Hudson River Railroad, he secured the control of the New York Central, which ran from Albany to Buffalo. This control was continued through the Lake Shore on one side of the lakes and the Michigan Central on the other to Chicago. Subsequently the Vanderbilt System was extended to Cincinnati and St. Louis. It was thus in immediate connection with the West and Northwest centering in Chicago, and the Southwest at Cincinnati and St. Louis. By close connection and affiliation with the Chicago and Northwestern Railway Company, the Vanderbilt system was extended beyond to Mississippi. I became director in the New York Central in 1874 and in the Chicago and Northwestern in 1877.

It has been my good fortune to meet with more or less intimacy many of the remarkable men in every department of life, but I think Commodore Vanderbilt was the most original. I had been well acquainted for some years both with the commodore and his son, William H. When I became attorney my relations were more intimate than those usually existing. I was in daily consultation with the commodore during the ten years prior to his death, and with his son from 1866 to 1885, when he died.

The commodore was constantly, because of his wealth and power, importuned by people who wished to interest him in their schemes. Most of the great and progressive enterprises of his time were presented to him. He would listen patiently, ask a few questions, and in a short time grasp the whole subject. Then with wonderful quickness and unerring judgment he would render his decision. No one knew by what process he arrived at these con-

clusions. They seemed to be the results as much of inspiration as of insight.

The Civil War closed in 1865, and one of its lessons had been the necessity for more railroads. The country had discovered that without transportation its vast and fertile territories could neither be populated nor made productive. Every mile of railroad carried settlers, opened farms and increased the national resources and wealth. The economical and critical conditions of the country, owing to the expansion of the currency and banking conditions, facilitated and encouraged vast schemes of railroad construction. This and a wild speculation resulted in the panic of 1873. Nearly the whole country went bankrupt. The recovery was rapid, and the constructive talent of the Republic saw that the restoration of credit and prosperity must be led by railway solvency. In August, 1874, Commodore Vanderbilt invited the representatives of the other and competitive lines to a conference at Saratoga. Owing, however, to the jealousies and hostilities of the period, only the New York Central, the Pennsylvania, and the Erie railways were represented.

The eastern railway situation was then dominated by Commodore Vanderbilt, Colonel Thomas A. Scott, of the Pennsylvania, and John W. Garrett, of the Baltimore and Ohio. Both Scott and Garrett were original men and empire builders. There was neither governmental nor State regulation. The head of a railway system had practically unlimited power in the operation of his road. The people were so anxious for the construction of railways that they offered every possible inducement to capital. The result was a great deal of unprofitable construction and immense losses to the promoters.

These able men saw that there was no possibility of

railway construction, operation, and efficiency, with a continuance of unrestricted competition. It has taken from 1874 until 1920 to educate the railway men, the shippers, and the government to a realization of the fact that transportation facilities required for the public necessities can only be had by the freest operations and the strictest government regulations; that the solution of the problem is a system so automatic that public arbitration shall decide the justice of the demands of labor, and rates be advanced to meet the decision, and that public authority also shall take into consideration the other factors of increased expenses and adequate facilities for the railroads, and that maintenance and the highest efficiency must be preserved and also necessary extensions. To satisfy and attract capital there must be the assurance of a reasonable return upon the investment.

The meeting called by Commodore Vanderbilt in 1874, at Saratoga, was an epoch-making event. We must remember the railway management of the country was in the absolute control of about four men, two of whom were also largest owners of the lines they managed. Fierce competition and cutting of rates brought on utter demoralization among shippers, who could not calculate on the cost of transportation, and great favoritism to localities and individuals by irresponsible freight agents who controlled the rates. Under these influences railway earnings were fluctuating and uncertain. Improvements were delayed and the people on the weaker lines threatened with bankruptcy.

Public opinion, however, believed this wild competition to be the only remedy for admitted railway evils. As an illustration of the change of public opinion and the better understanding of the railway problems, this

occurred in the month of October, 1920. A committee of shippers and producers representing the farmers, manufacturers, and business men along a great railway system came to see the manager of the railroad and said to him: "We have been all wrong in the past. Our effort has always been for lower rates, regardless of the necessities of the railways. We have tried to get them by seeking bids from competing lines for our shipments and by appealing to the Interstate Commerce Commission. The expenses of the railroads have been increased by demands of labor, by constantly rising prices and cost of rails, cars, terminals, and facilities, but we have been against allowing the railroads to meet this increased cost of operation by adequate advances in rates. We now see that this course was starving the railroads, and we are suffering for want of cars and locomotives to move our traffic and terminals to care for it. We are also suffering because the old treatment of the railroads has frightened capital so that the roads cannot get money to maintain their lines and make necessary improvements to meet the demands of business. We know now that rates make very little difference, because they can be absorbed in our business. What we must have is facilities to transport our products, and we want to help the railroads to get money and credit, and again we emphasize our whole trouble is want of cars, locomotives, and terminal facilities."

Happily, public opinion was reflected in the last Congress in the passage of the Cummins-Esch bill, which is the most enlightened and adaptable legislation of the last quarter of a century.

To return to the conference at Saratoga, the New York Central, the Pennsylvania, and the Erie came to

the conclusion that they must have the co-operation of the Baltimore and Ohio. As Mr. Garrett, president and controlling owner of that road, would not come to the conference, the members decided that the emergency was so great that they must go to him. This was probably the most disagreeable thing Commodore Vanderbilt ever did. The marvellous success of his wonderful life had been won by fighting and defeating competitors. The peril was so great that they went as associates, and the visit interested the whole country and so enlarged Mr. Garrett's opinion of his power that he rejected their offer and said he would act independently. A railway war immediately followed, and in a short time bankruptcy threatened all lines, and none more than the Baltimore and Ohio.

The trunk lines then got together and entered into an agreement to stabilize rates and carry them into effect. They appointed as commissioner Mr. Albert Fink, one of the ablest railway men of that time. Mr. Fink's administration was successful, but the rivalries and jealousies of the lines and the frequent breaking of agreements were too much for one man.

The presidents and general managers of all the railroads east of Chicago then met and formed an association, and this association was a legislative body without any legal authority to enforce its decrees. It had, however, two effects: the disputes which arose were publicly discussed, and the merits of each side so completely demonstrated that the decision of the association came to be accepted as just and right. Then the verdict of the association had behind it the whole investment and banking community and the press. The weight of this was sufficient to compel obedience to its decisions by the

most rebellious member. No executive could continue to hold his position while endeavoring to break up the association.

It is one of the most gratifying events of my life that my associates in this great and powerful association elected me their president, and I continued in office until the Supreme Court in a momentous decision declared that the railroads came under the provision of the Sherman Anti-Trust Law and dissolved these associations in the East, West, and South.

It was a liberal education of the railway problems to meet the men who became members of this association. Most of them left an indelible impression upon the railway conditions of the time and of the railway policies of the future. All were executives of great ability and several rare constructive geniuses.

In our system there was John Newell, president of the Lake Shore and Michigan Southern, a most capable and efficient manager. Henry B. Ledyard, president of the Michigan Central, was admirably trained for the great responsibilities which he administered so well. There was William Bliss, president of the Boston and Albany, who had built up a line to be one of the strongest of the New England group.

Melville E. Ingalls, president of the Cleveland, Cincinnati, Chicago and St. Louis, had combined various weak and bankrupt roads and made them an efficient organization. He had also rehabilitated and put in useful working and paying condition the Chesapeake and Ohio.

Ingalls told me a very good story of himself. He had left the village in Maine, where he was born, and after graduation from college and admission to the bar had

settled in Boston. To protect the interests of his clients he had moved to Cincinnati, Ohio, and rescued railroad properties in which they were interested. When his success was complete and he had under his control a large and successfully working railway system, he made a visit to his birthplace.

One evening he went down to the store where the village congress was assembled, sitting on the barrels and the counter. They welcomed him very cordially, and then an inquisitive farmer said to him: "Melville, it is reported around here that you are getting a salary of nigh unto ten thousand dollars a year."

Mr. Ingalls, who was getting several times that amount, modestly admitted the ten, which was a prodigious sum in that rural neighborhood. Whereupon the old farmer voiced the local sentiment by saying: "Well, Melville, that shows what cheek and circumstances can do for a man."

I recall an incident connected with one of the ablest of the executives in our system. One day we had a conference of rival interests, and many executives were there in the effort to secure an adjustment. For this purpose we had an arbitrator. After a most exhausting day in the battle of wits and experience for advantages, I arrived home used up, but after a half-hour's sleep I awoke refreshed and, consulting my diary, found I was down for a speech at a banquet at Delmonico's that night.

I arrived late, the intervening time being devoted to intensive and rapid preparation. I was called early. The speech attracted attention and occupied a column in the morning's papers. I was in bed at eleven o'clock and had between seven and eight hours' refreshing sleep.

On arriving at our meeting-place the next morning, one of the best-known presidents took me aside and said: "Chauncey, by making speeches such as you did last night you are losing the confidence of the people. They say you cannot prepare such speeches and give proper attention to your business."

"Well," I said to him, "my friend, did I lose anything before the arbitrator yesterday?"

He answered very angrily: "No, you gained entirely too much."

"Well," I then said, "I am very fresh this morning. But what did you do last night?"

He answered that he was so exhausted that he went to Delmonico's and ordered the best dinner possible. Then he went on to say: "A friend told me a little game was going on up-stairs, and in a close room filled with tobacco smoke I played poker until two o'clock and drank several high-balls. The result is, I think we better postpone this meeting, for I do not feel like doing anything to-day."

"My dear friend," I said, "you will get the credit of giving your whole time to business, while I am by doing what refreshes my mind discredited, because it gets in the papers. I shall keep my method regardless of consequences."

He kept his, and although much younger than myself died years ago.

George B. Roberts, president of the Pennsylvania, was a very wise executive and of all-around ability. Frank Thompson, vice-president and afterwards president of the same road, was one of the ablest operating officers of his time and a most delightful personality. Mr. A. J. Cassatt was a great engineer and possessed rare foresight

and vision. He brought the Pennsylvania into New York City through a tunnel under the Hudson River, continued the tunnel across the city to the East River and then under the river to connect with the Long Island, which he had acquired for his system.

D. W. Caldwell, president of the New York, Chicago, and St. Louis, added to railway ability wit and humor. He told a good story on Mr. George Roberts. Caldwell was at one time division superintendent under President Roberts. He had obtained permission to build a new station-house, in whose plan and equipment he was deeply interested. It was Mr. Roberts's habit, by way of showing his subordinates that he was fully aware of their doings, to either add or take away something from their projects.

Caldwell prepared a station-house according to his ideas, and, to prevent Roberts from making any essential changes he added an unnecessary bay window to the front of the passengers' room. Roberts carefully examined the plans and said: "Remove that bay window," and then approved the plan, and Caldwell had what he wanted.

Caldwell used to tell of another occasion when on a Western line he had over him a very severe and harsh disciplinarian as president. This president was a violent prohibitionist and had heard that Caldwell was a bon-vivant. He sent for Caldwell to discipline or discharge him. After a long and tiresome journey Caldwell arrived at the president's house. His first greeting was: "Mr. Caldwell, do you drink?"

Caldwell, wholly unsuspecting, answered: "Thank you, Mr. President, I am awfully tired and will take a little rye."

Mr. E. B. Thomas, president of the Lehigh Valley, was a valuable member of the association. The Baltimore and Ohio, as usual, had its president, Mr. Charles F. Mayer, accompanied by an able staff. The Erie was represented by one of the most capable and genial of its many presidents, Mr. John King.

King was a capital story-teller, and among them I remember this one: At one time he was general manager of the Baltimore and Ohio under John W. Garrett. In order to raise money for his projected extensions, Garrett had gone to Europe. The times were financially very difficult. Johns Hopkins, the famous philanthropist, died. His immortal monument is the Johns Hopkins University and Medical School. Everybody in Baltimore attended the funeral. Among the leading persons present was another John King, a banker, who was Hopkins's executor. A messenger-boy rushed in with a cable for John King, and handed it to John King, the executor, who sat at the head of the mourners. He read it and then passed it along so that each one could read it until it reached John King, of the Baltimore and Ohio, who sat at the foot of the line. The cable read as follows: "Present my sympathies to the family and my high appreciation of Mr. Johns Hopkins, and borrow from the executor all you can at five per cent. Garrett."

Commodore Vanderbilt was succeeded in the presidency by his son, William H. Vanderbilt, who was then past forty years old and had been a successful farmer on Staten Island. He was active in neighborhood affairs and in politics. This brought him in close contact with the people and was of invaluable benefit to him when he became president of a great railroad corporation. He

also acquired familiarity in railway management as a director of one on Staten Island.

Mr. William H. Vanderbilt was a man of great ability, and his education made him in many ways an abler man than his father for the new conditions he had to meet. But, like many a capable son of a famous father, he did not receive the credit which was due him because of the overshadowing reputation of the commodore. Nevertheless, on several occasions he exhibited the highest executive qualities.

One of the great questions of the time was the duty of railroads to the cities in which they terminated, and the decision of the roads south of New York to have lower rates to Philadelphia and Baltimore. New York felt so secure in the strength of its unrivalled harbor and superior shipping facilities that the merchants and financiers were not alarmed. Very soon, however, there was such a diversion of freight from New York as to threaten very seriously its export trade and the superiority of its port. The commercial leaders of the city called upon Mr. Vanderbilt, who after the conference said to them: "I will act in perfect harmony with you and will see that the New York Central Railroad protects New York City regardless of the effect upon its finances." The city representatives said: "That is very fine, and we will stand together."

Mr. Vanderbilt immediately issued a statement that the rates to the seaboard should be the same to all ports, and that the New York Central would meet the lowest rates to any port by putting the same in effect on its own lines. The result was the greatest railroad war since railroads began to compete. Rates fell fifty per cent, and it was a question of the survival of the fittest.

Commerce returned to New York, and the competing railroads, to avoid bankruptcy, got together and formed the Trunk Line Association.

New York City has not always remembered how intimately bound is its prosperity with that of the great railroad whose terminal is within its city limits. Mr. Vanderbilt found that the railroad and its management were fiercely assailed in the press, in the legislature, and in municipal councils. He became convinced that no matter how wise or just or fair the railroad might be in the interests of every community and every business which were so dependent upon its transportation, the public would not submit to any great line being owned by one man. The Vanderbilt promptness in arriving at a decision was immediately shown. He called upon Mr. Pierpont Morgan, and through him a syndicate, which Morgan formed, took and sold the greater part of Mr. Vanderbilt's New York Central stock. The result was that the New York Central from that time was owned by the public. It is a tribute to the justice and fairness of the Vanderbilt management that though the management has been submitted every year since to a stockholders' vote, there has practically never been any opposition to a continuance of the Vanderbilt policy and management.

Among the most important of the many problems during Mr. Vanderbilt's presidency was the question of railway commissions, both in national and State governments. In my professional capacity of general counsel, and in common with representatives of other railroads, I delivered argumentative addresses against them. The discussions converted me, and I became convinced of their necessity. The rapidly growing importance of

railway transportation had created the public opinion that railway management should be under the control and supervision of some public body; that all passengers or shippers, or those whose land was taken for construction and development, should have an appeal from the decision of the railway managers to the government through a government commission.

As soon as I was convinced that commissions were necessary for the protection of both the public and the railroads, I presented this view to Mr. Vanderbilt. The idea was contrary to his education, training, and opinion. It seemed to me that it was either a commission or government ownership, and that the commission, if strengthened as a judicial body, would be as much of a protection to the bond and stock holders and the investing public as to the general public and the employees. Mr. Vanderbilt, always open-minded, adopted this view and supported the commission system and favored legislation in its behalf.

In 1883 Mr. Vanderbilt decided, on account of illness, to retire from the presidency, and Mr. James H. Rutter was elected his successor. Mr. Rutter was the ablest freight manager in the country, but his health gave way under the exactions of executive duties, and I acted largely for him during his years of service. He died early in 1885, and I was elected president.

The war with the West Shore had been on for several years, with disastrous results to both companies. The Ontario and Western, which had large terminal facilities near Jersey City on the west side of the Hudson, ran for fifty miles along the river before turning into the interior. At its reorganization it had ten millions of cash in the treasury. With this as a basis, its directors decided to

organize a new railroad, to be called the West Shore, and parallel the New York Central through its entire length to Buffalo. As the New York Central efficiently served this whole territory, the only business the West Shore could get must be taken away from the Central. To attract this business it offered at all stations lower rates. To retain and hold its business the New York Central met those rates at all points so that financially the West Shore went into the hands of a receiver.

The New York Central was sustained because of its superior facilities and connections and established roadway and equipment. But all new and necessary construction was abandoned, maintenance was neglected, and equipment run down under forced reduction of expenses.

I had very friendly personal relations with the managers and officers of the West Shore, and immediately presented to them a plan for the absorption of their line, instead of continuing the struggle until absolute exhaustion. Mr. Vanderbilt approved of the plan, as did the financial interests represented by Mr. Pierpont Morgan.

By the reorganization and consolidation of the two companies the New York Central began gradually to establish its efficiency and to work on necessary improvements. As evidence of the growth of the railway business of the country, the New York Central proper has added since the reorganization an enormous amount of increased trackage, and has practically rebuilt, as a necessary second line, the West Shore and used fully its very large terminal facilities on the Jersey side of the Hudson.

During his active life Mr. Vanderbilt was very often importuned to buy a New York daily newspaper. He

was personally bitterly assailed and his property put in peril by attacks in the press. He always rejected the proposition to buy one. "If," he said, "I owned a newspaper, I would have all the others united in attacking me, and they would ruin me, but by being utterly out of the journalistic field, I find that taking the press as a whole I am fairly well treated. I do not believe any great interest dealing with the public can afford to have an organ."

Colonel Scott, of the Pennsylvania, thought otherwise, but the result of his experiment demonstrated the accuracy of Mr. Vanderbilt's judgment. Scott selected as editor of the *New York World* one of the most brilliant journalistic writers of his time, William H. Hurlburt. When it became known, however, that the *World* belonged to Colonel Scott, Hurlburt's genius could not save it. The circulation ran down to a minimum, the advertising followed suit, and the paper was losing enormously every month. Mr. Joseph Pulitzer, with the rare insight and foresight which distinguished him, saw what could be made of the *World*, with its privileges in the Associated Press, and so he paid Scott the amount he had originally invested, and took over and made a phenomenal success of this bankrupt and apparently hopeless enterprise.

I tried during my presidency to make the New York Central popular with the public without impairing its efficiency. The proof of the success of this was that without any effort on my part and against my published wishes the New York delegation in the national Republican convention in 1888, with unprecedented unanimity, presented me as New York's candidate for president. I retired from the contest because of the intense hostility

to railroad men in the Western States. Those States could not understand how this hostility, which they had to railroads and everybody connected with them, had disappeared in the great State of New York.

During my presidency the labor question was very acute and strikes, one after another, common. The universal method of meeting the demands of labor at that time was to have a committee of employees or a leader present the grievances to the division superintendent or the superintendent of motive power. These officers were arbitrary and hostile, as the demands, if acceded to, led to an increase of expenses which would make them unpopular with the management. They had a difficult position. The employees often came to the conclusion that the only way for them to compel the attention of the higher officers and directors was to strike.

Against the judgment of my associates in the railway management I decided to open my doors to any individual or committee of the company. At first I was overwhelmed with petty grievances, but when the men understood that their cases would be immediately heard and acted upon, they decided among themselves not to bring to me any matters unless they regarded them of vital importance. In this way many of the former irritations, which led ultimately to serious results, no longer appeared.

I had no trouble with labor unions, and found their representatives in heart-to-heart talks very generally reasonable. Mr. Arthur, chief of the Brotherhood of Locomotive Engineers, had many of the qualities of a statesman. He built up his organization to be the strongest of its kind among the labor unions. I enjoyed his confidence and friendship for many years.

There never was but one strike on the New York Central during my administration, and that one occurred while I was absent in Europe. Its origin and sequel were somewhat dramatic. I had nearly broken down by overwork, and the directors advised me to take an absolute rest and a trip abroad.

I sent word over the line that I wanted everything settled before leaving, and to go without care. A large committee appeared in my office a few mornings after. To my surprise there was a representative from every branch of the service, passenger and freight conductors, brakemen, shopmen, yardmen, switchmen, and so forth. These had always come through their local unions. I rapidly took up and adjusted what each one of the representatives of his order claimed, and then a man said: "I represent the locomotive engineers."

My response was: "You have no business here, and I will have nothing to do with you. I will see no one of the locomotive engineers, except their accredited chief officer."

"Well," he said, "Mr. President, there is a new condition on the road, a new order of labor called the Knights of Labor. We are going to absorb all the other unions and have only one. The only obstacle in the way is the locomotive engineers, who refuse to give up their brotherhood and come in with us, but if you will recognize us only, that will force them to join. Now, the Brotherhood intends to present a demand very soon, and if you will recognize our order, the Knights of Labor, and not the Brotherhood of Locomotive Engineers, we will take care of what they demand and all others from every department for two years, and you can take your trip to Europe in perfect peace of mind. If you do not do this there will be trouble."

I declined to deal with them as representatives of the Brotherhood of Locomotive Engineers. Then their spokesman said: "As this is so serious to you, we will give you to-night to think it over and come back in the morning."

I immediately sent for the superintendent of motive power and directed him to have posted by telegraph in every roundhouse that the request of the Brotherhood of Locomotive Engineers, of which this committee had told me, had been granted. The next morning the committee returned, and their leader said: "Well, Mr. President, you have beaten us and we are going home."

Then I appealed to them, saying: "I am a pretty badly broken-up man. The doctors tell me that if I can have three months without care I will be as good as ever. You must admit that I have at all times been absolutely square with you and tried to adjust fairly the matters you have brought to me. Now, will you take care of me while I am absent?"

They answered unanimously: "Mr. President, we will, and you can be confident there will be no trouble on the New York Central while you are away."

I sailed with my mind free from anxiety, hopeful and happy, leaving word to send me no cables or letters. After a visit to the Passion Play at Ober-Ammergau in Upper Bavaria, I went into the Austrian Tyrol. One night, at a hotel in Innsbruck, Mr. Graves, a very enterprising reporter of a New York paper, suddenly burst into my room and said: "I have been chasing you all over Europe for an interview on the strike on the New York Central." This was my first information of the strike.

As soon as I had left New York and was on the ocean,

the young and ambitious officers who were at the head of the operations of the railroad and disapproved of my method of dealing with the employees, discharged every member of the committee who had called upon me. Of course, this was immediately followed by a sympathetic outburst in their behalf, and the sympathizers were also discharged. Then the whole road was tied up by a universal strike. After millions had been lost in revenue by the railroad and in wages by the men, the strike was settled, as usual, by a compromise, but it gave to the Knights of Labor the control, except as to the Brotherhood of Locomotive Engineers. The early settlement of the strike was largely due to the loyalty and courage of the Brotherhood.

During my presidency I was much criticised by the public, but never by the directors of the company, because of my activities in politics and on the platform. For some time, when the duties of my office became most onerous, and I was in the habit of working all day and far into the night, I discovered that this concentrated attention to my railroad problems and intense and continuous application to their solution was not only impairing my efficiency but my health. As I was not a sport, and never had time for games or horses, I decided to try a theory, which was that one's daily duties occupied certain cells of the brain while the others remained idle; that the active cells became tired by overwork while others lost their power in a measure by idleness; that if, after a reasonable use of the working cells, you would engage in some other intellectual occupation, it would furnish as much relief or recreation as outdoor exercise of any kind. I had a natural facility for quick and easy preparation for public speaking, and so adopted

that as my recreation. The result proved entirely successful.

After a hard day's work, on coming home late in the afternoon, I accustomed myself to take a short nap of about fifteen minutes. Then I would look over my tablets to see if any engagement was on to speak in the evening, and, if so, the preparation of the speech might be easy, or, if difficult, cause me to be late at dinner. These speeches were made several times a week, and mainly at banquets on closing of the sessions of conventions of trade organizations of the country. The reciprocal favors and friendship of these delegates transferred to the New York Central a large amount of competitive business.

While I was active in politics I issued strict orders that every employee should have the same liberty, and that any attempt on the part of their superior officers to influence or direct the political action of a subordinate would be cause for dismissal. This became so well known that the following incident, which was not uncommon, will show the result.

As I was taking the train the morning after having made a political speech at Utica, the yardmaster, an Irishman, greeted me very cordially and then said: "We were all up to hear ye last night, boss, but this year we are agin ye."

The position which this activity gave me in my own party, and the fact that, unlike most employers, I protected the employees in their liberty and political action, gave me immense help in protecting the company from raids and raiders.

We had a restaurant in the station at Utica which had deteriorated. The situation was called to my attention

in order to have the evils corrected by the receipt of the following letter from an indignant passenger: "Dear Mr. President: You are the finest after-dinner speaker in the world. I would give a great deal to hear the speech you would make after you had dined in the restaurant in your station at Utica."

After thirteen years of service as president I was elected chairman of the board of directors. Mr. Samuel R. Callaway succeeded me as president, and on his resignation was succeeded by Mr. William H. Newman, and upon his resignation Mr. W. C. Brown became president. Following Mr. Brown, Mr. Alfred H. Smith was elected and is still in office. All these officers were able and did excellent service, but I want to pay special tribute to Mr. Smith.

Mr. Smith is one of the ablest operating officers of his time. When the United States Government took over the railroads he was made regional director of the government for railroads in this territory. He received the highest commendation from the government and from the owners of the railroads for the admirable way in which he had maintained them and their efficiency during the government control.

On the surrender of the railroads by the government, Mr. Smith was welcomed back by his directors to the presidency of the New York Central. The splendid condition of the Central and its allied lines is largely due to him. During his service as regional director the difficult task of the presidency of the New York Central was very ably performed by Mr. William K. Vanderbilt, Jr. Though the youngest among the executive officers of the railroads of the country, he was at the same time one of the best.

Among the efficient officers who have served the New York Central during the time I have been with the company, I remember many on account of their worth and individuality. H. Walter Webb came into the railway service from an active business career. With rare intelligence and industry he rapidly rose in the organization and was a very capable and efficient officer. There was Theo. Voorhees, the general superintendent, an unusually young man for such a responsible position. He was a graduate of Troy Polytechnical School and a very able operating officer. Having gone directly from the college to a responsible position, he naturally did not understand or know how to handle men until after long experience. He showed that want of experience in a very drastic way in the strike of 1892 and its settlement. Being very arbitrary, he had his own standards. For instance, I was appealed to by many old brakemen and conductors whom he had discharged. I mention one particularly, who had been on the road for twenty-five years. Voorhees's answer to me was: "These old employees are devoted to Toucey, my predecessor, and for efficient work I must have loyalty to me."

I reversed his order and told him I would begin to discharge, if necessary, the latest appointments, including himself, keeping the older men in the service who had proved their loyalty to the company by the performance of their duties.

Mr. Voorhees became afterwards vice-president and then president of the Philadelphia and Reading. With experience added to his splendid equipment and unusual ability he became one of the best executives in the country.

Mr. John M. Toucey, who had come up from the bot-

tom to be general superintendent and general manager, was a hard student. His close contact with his fellow employees gave him wonderful control over men. He supplemented his practical experience by hard study and was very well educated. Though self-taught, he had no confidence in the graduates of the professional schools.

In selecting an assistant, one of them told me that Toucey subjected him to a rigid examination and then said: "What is your railroad career?"

"I began at the bottom," answered the assistant, "and have filled every office on my old road up to division superintendent, which I have held for so many years."

"That is very fine," said Toucey, "but are you a graduate of the Troy Technical School?"

"No, sir."

"Of the Stevens Tech.?"

"No, sir."

"Of Massachusetts Tech.?"

"No, sir."

"Then you are engaged," said Toucey.

Mr. Toucey was well up-to-date, and differed from a superintendent on another road in which I was a director. The suburban business of that line had increased very rapidly, but there were not enough trains or cars to accommodate the passengers. The overcrowding caused many serious discomforts. I had the superintendent called before the board of directors, and said to him: "Why don't you immediately put on more trains and cars?"

"Why, Mr. Depew," he answered, "what would be the use? They are settling so fast along the line that the people would fill them up and overcrowd them just as before."

I was going over the line on an important tour at one time with G. H. Burroughs, superintendent of the Western Division. We were on his pony engine, with seats at the front, alongside the boiler, so that we could look directly on the track. Burroughs sat on one side and I on the other. He kept on commenting aloud by way of dictating to his stenographer, who sat behind him, and praise and criticism followed rapidly. I heard him utter in his monotonous way: "Switch misplaced, we will all be in hell in a minute," and then a second afterwards continue: "We jumped the switch and are on the track again. Discharge that switchman."

Major Zenas Priest was for fifty years a division superintendent. It was a delightful experience to go with him over his division. He knew everybody along the line, was general confidant in their family troubles and arbiter in neighborhood disputes. He knew personally every employee and his characteristics and domestic situation. The wives were generally helping him to keep their husbands from making trouble. To show his control and efficiency, he was always predicting labor troubles and demonstrating that the reason they did not occur was because of the way in which he handled the situation.

Mr. C. M. Bissell was a very efficient superintendent, and for a long time in charge of the Harlem Railroad. He told me this incident. We decided to put in effect as a check upon the conductors a system by which a conductor, when a fare was paid on the train, must tear from a book a receipt which he gave to the passenger, and mark the amount on the stub from which the receipt was torn. Soon after a committee of conductors called upon Mr. Bissell and asked for an increase of pay. "Why," Bissell asked, "boys, why do you ask for that now?"

After a rather embarrassing pause the oldest conductor said: "Mr. Bissell, you have been a conductor yourself."

This half-century and six years during which I have been in the service of the New York Central Railroad has been a time of unusual pleasure and remarkably free from friction or trouble. In this intimate association with the railroad managers of the United States I have found the choicest friendships and the most enduring. The railroad manager is rarely a large stockholder, but he is a most devoted and efficient officer of his company. He gives to its service, for the public, the employees, the investors, and the company, all that there is in him. In too many instances, because these officers do not get relief from their labor by variation of their work, they die exhausted before their time.

The story graphically told by one of the oldest and ablest of railroad men, Mr. Marvin Hughitt, for a long time president and now chairman of the Chicago and Northwestern Railway, illustrates what the railroad does for the country. Twenty-five years ago the Northwestern extended its lines through Northern Iowa. Mr. Hughitt drove over the proposed extension on a buckboard. The country was sparsely settled because the farmers could not get their products to market, and the land was selling at six dollars per acre.

In a quarter of a century prosperous villages and cities had grown up along the line, and farms were selling at over three hundred dollars per acre. While this enormous profit from six dollars per acre to over three hundred has come to the settlers who held on to their farms because of the possibilities produced by the railroad, the people whose capital built the road must remain satisfied

with a moderate return by way of dividend and interest, and without any enhancement of their capital, but those investors should be protected by the State and the people to whom their capital expenditures have been such an enormous benefit.

XIX

RECOLLECTIONS FROM ABROAD

I know of nothing more delightful for a well-read American than to visit the scenes in Great Britain with which he has become familiar in his reading. No matter how rapidly he may travel, if he goes over the places made memorable by Sir Walter Scott in the "Waverley Novels," and in his poems, he will have had impressions, thrills, and educational results which will be a pleasure for the rest of his life. The same is true of an ardent admirer of Dickens or of Thackeray, in following the footsteps of their heroes and heroines. I gained a liberal education and lived over again the reading and studies of a lifetime in my visits to England, Ireland, Scotland, and Wales. I also had much the same experience of vivifying and spiritualizing my library in France, Italy, Germany, Belgium, and Holland.

London is always most hospitable and socially the most delightful of cities. While Mr. Gladstone was prime minister and more in the eyes of the world than any statesman of any country, a dinner was given to him with the special object of having me meet him. The ladies and gentlemen at the dinner were all people of note. Among them were two American bishops. The arrangement made by the host and hostess was that when the ladies left the dining-room I should take the place made vacant alongside Mr. Gladstone, but one of the American bishops, who in his younger days was a

famous athlete, made a flying leap for that chair and no sooner landed than he at once proposed to Mr. Gladstone this startling question: "As the bishop of the old Catholic Church in Germany does not recognize the authority of the pope, how can he receive absolution?"—and some other abstruse theological questions. This at once aroused Mr. Gladstone, who, when once started, was stopped with difficulty, and there was no pause until the host announced that the gentlemen should join the ladies. I made it a point at the next dinner given for me to meet Mr. Gladstone that there should be no American bishops present.

At another time, upon arriving at my hotel in London from New York, I found a note from Lord Rosebery saying that Mr. Gladstone was dining with Lady Rosebery and himself that evening, and there would be no other guests, and inviting me to come. I arrived early and found Mr. Gladstone already there. While the custom in London society then was for the guests to be late, Mr. Gladstone was always from fifteen minutes to half an hour in advance of the time set by his invitation. He greeted me with great cordiality, and at once what were known as the Gladstone tentacles were fastened on me for information. It was a peculiarity with the grand old man that he extracted from a stranger practically all the man knew, and the information was immediately assimilated in his wonderful mind. He became undoubtedly the best-informed man on more subjects than anybody in the world.

Mr. Gladstone said to me: "It has been raining here for forty days. What is the average rainfall in the United States and in New York?" If there was any subject about which I knew less than another, it was the

meteorological conditions in America. He then continued with great glee: "Our friend, Lord Rosebery, has everything and knows everything, so it is almost impossible to find for him something new. Great books are common, but I have succeeded in my explorations among antiquarian shops in discovering the most idiotic book that ever was written. It was by an old lord mayor of London, who filled a volume with his experiences in an excursion on the Thames, which is the daily experience of every Englishman." To the disappointment of Mr. Gladstone, Lord Rosebery also had that book. The evening was a memorable one for me.

After a most charming time and dinner, while Lord Rosebery went off to meet an engagement to speak at a meeting of colonial representatives, Lady Rosebery took Mr. Gladstone and myself to the opera at Covent Garden. There was a critical debate on in the House of Commons, and the whips were running in to inform him of the progress of the battle and to get instructions from the great leader.

During the entr'actes Mr. Gladstone most interestingly talked of his sixty years' experience of the opera. He knew all the great operas of that period, and criticised with wonderful skill the composers and their characteristics. He gave a word picture of all the great artists who had appeared on the English stage and the merits and demerits of each. A stranger listening to him would have said that a veteran musical critic, who had devoted his life to that and nothing else, was reminiscing. He said that thirty years before the manager of Covent Garden had raised the pitch, that this had become so difficult that most of the artists, to reach it, used the tremolo, and that the tremolo had taken away from him

the exquisite pleasure which he formerly had in listening to an opera.

Mr. Gladstone was at that time the unquestionable master of the House of Commons and its foremost orator. I unfortunately never heard him at his best, but whether the question was of greater or lesser importance, the appearance of Mr. Gladstone at once lifted it above ordinary discussion to high debate.

Mr. Gladstone asked many questions about large fortunes in the United States, was curious about the methods of their accumulation, and whether they survived in succeeding generations. He wanted to know all about the reputed richest man among them. I told him I did not know the amount of his wealth, but that it was at least one hundred millions of dollars.

"How invested?" he asked.

I answered: "All in fluid securities which could be turned into cash in a short time."

He became excited at that and said: "Such a man is dangerous not only to his own country but to the world. With that amount of ready money he could upset the exchanges and paralyze the borrowing power of nations."

"But," I said, "you have enormous fortunes," and mentioned the Duke of Westminster.

"I know every pound of Westminster's wealth," he said. "It is in lands which he cannot sell, and burdened with settlements of generations and obligations which cannot be avoided."

"How about the Rothschilds?" I asked.

"Their fortunes," he answered, "are divided among the firms in London, Paris, Vienna, and Frankfort, and it would be impossible for them to be combined and used to unsettle the markets of the world. But

Mr. — could do this and prevent governments from meeting their obligations.”

Mr. Gladstone had no hostility to great fortunes, however large, unless so invested as to be immediately available by a single man for speculation. But fortunes larger than that of one hundred millions have since been acquired, and their management is so conservative that they are brakes and safeguards against unreasoning panics. The majority of them have been used for public benefit. The most conspicuous instances are the Rockefeller Foundation, the Carnegie Endowment, and the Frick Creation.

Henry Labouchère told me a delightful story of Mr. Gladstone's first meeting with Robert T. Lincoln, when he arrived in London as American minister. Mr. Lincoln became in a short time after his arrival one of the most popular of the distinguished list of American representatives to Great Britain. He was especially noted for the charm of his conversation. Labouchère said that Mr. Gladstone told him that he was very anxious to meet Mr. Lincoln, both because he was the new minister from the United States and because of his great father, President Lincoln. Labouchère arranged for a dinner at his house, which was an hour in the country from Mr. Gladstone's city residence. Mrs. Gladstone made Mr. Labouchère promise, as a condition for permitting her husband to go, that Mr. Gladstone should be back inside of his home at ten o'clock.

The dinner had no sooner started than some question arose which not only interested but excited Mr. Gladstone. He at once entered upon an eloquent monologue on the subject. There was no possibility of interruption by any one, and Mr. Lincoln had no chance whatever to

interpose a remark. When the clock was nearing eleven Labouchère interrupted this torrent of talk by saying: "Mr. Gladstone, it is now eleven; it is an hour's ride to London, and I promised Mrs. Gladstone to have you back at ten." When they were seated in the carriage Labouchère said to Mr. Gladstone: "Well, you have passed an evening with Mr. Lincoln; what do you think of him?" He replied: "Mr. Lincoln is a charming personality, but he does not seem to have much conversation."

Among the very able men whom I met in London was Joseph Chamberlain. When I first met him he was one of Mr. Gladstone's trusted lieutenants. He was a capital speaker, a close and incisive debater, and a shrewd politician. When he broke with Mr. Gladstone, he retained his hold on his constituency and continued to be a leader in the opposite party.

Mr. Chamberlain told me that in a critical debate in the House of Commons, when the government was in danger, Mr. Gladstone, who alone could save the situation, suddenly disappeared. Every known resort of his was searched to find him. Mr. Chamberlain, recollecting Mr. Gladstone's interest in a certain subject, drove to the house of the lady whose authority on that subject Mr. Gladstone highly respected. He found him submitting to the lady for her criticism and correction some of Watts's hymns, which he had translated into Italian.

The British Government sent Mr. Chamberlain to America, and he had many public receptions given him by our mercantile and other bodies. On account of his separating from Mr. Gladstone on Home Rule, he met with a great deal of hostility here from the Irish. I was present at a public dinner where the interruptions and

hostile demonstrations were very pronounced. But Mr. Chamberlain won his audience by his skill and fighting qualities.

I gave him a dinner at my house and had a number of representative men to meet him. He made the occasion exceedingly interesting by presenting views of domestic conditions in England and international ones with this country, which were quite new to us.

Mr. Chamberlain was a guest on the *Teutonic* at the famous review of the British navy celebrating Queen Victoria's jubilee, where I had the pleasure of again meeting him. He had recently married Miss Endicott, the charming daughter of our secretary of war, and everybody appreciated that it was a British statesman's honeymoon.

He gave me a dinner in London, at which were present a large company, and two subjects came under very acute discussion. There had been a recent marriage in high English society, where there were wonderful pedigree and relationships on both sides, but no money. It finally developed, however, that under family settlements the young couple might have fifteen hundred pounds a year, or seven thousand five hundred dollars. The decision was unanimous that they could get along very well and maintain their position on this sum and be able to reciprocate reasonably the attentions they would receive. Nothing could better illustrate the terrific increase in the cost of living than the contrast between then and now.

Some one of the guests at the dinner said that the Americans by the introduction of slang were ruining the English language. Mr. James Russell Lowell had come evidently prepared for this controversy. He said that

American slang was the common language of that part of England from which the Pilgrims sailed, and that it had been preserved in certain parts of the United States, notably northern New England. He then produced an old book, a sort of dictionary of that period, and proved his case. It was a surprise to everybody to know that American slang was really classic English, and still spoken in the remoter parts of Massachusetts and New Hampshire, though no longer in use in England.

The period of Mr. Gladstone's reign as prime minister was one of the most interesting for an American visitor who had the privilege of knowing him and the eminent men who formed his Cabinet. The ladies of the Cabinet entertained lavishly and superbly. A great favorite at these social gatherings was Miss Margot Tennant, afterwards Mrs. Asquith. Her youth, her wit, her originality and audacity made every function a success which was graced by her presence.

The bitterness towards Mr. Gladstone of the opposition party surpassed anything I have met in American politics, except during the Civil War. At dinners and receptions given me by my friends of the Tory party I was supposed as an American to be friendly to Mr. Gladstone and Home Rule. I do not know whether this was the reason or whether it was usual, but on such occasions the denunciation of Mr. Gladstone as a traitor and the hope of living to see him executed was very frequent.

I remember one important public man who was largely interested and a good deal of a power in Canadian and American railroads. He asked a friend of mine to arrange for me to meet him. I found him a most agreeable man and very accurately informed on the railway situation in Canada and the United States. He

was preparing for a visit, and so wanted me to fill any gaps there might be in his knowledge of the situation.

Apropos of the political situation at the time, he suddenly asked me what was the attitude of the people of the United States towards Mr. Gladstone and his Home Rule bill. I told him they were practically unanimous in favor of the bill, and that Mr. Gladstone was the most popular Englishman in the United States. He at once flew into a violent rage, the rarest thing in the world for an Englishman, and lost control of his temper to such a degree that I thought the easiest way to dam the flood of his denunciation was to plead another engagement and retire from the field. I met him frequently afterwards, especially when he came to the United States, but carefully avoided his pet animosity.

One year, in the height of the crisis of Mr. Gladstone's effort to pass the Home Rule bill, a member of his Cabinet said to me: "We of the Cabinet are by no means unanimous in believing in Mr. Gladstone's effort, but he is the greatest power in our country. The people implicitly believe in him and we are helping all we can."

It is well known that one after another broke away from him in time. The same Cabinet minister continued: "Mr. Gladstone has gone to the extreme limit in concessions made in his Home Rule bill, and he can carry the English, Scotch, and Welsh members. But every time the Irish seem to be satisfied, they make a new demand and a greater one. Unless this stops and the present bill is accepted, the whole scheme will break down. Many of the Irish members are supported by contributions from America. Their occupation is politics. If Home Rule should be adopted the serious people of Ireland, whose economic interests are at stake,

might come to the front and take all representative offices themselves. We have come to the conclusion that enough of the Irish members to defeat the bill do not want Home Rule on any conditions. I know it is a custom when you arrive home every year that your friends meet you down the Bay and give you a reception. Then you give an interview of your impressions over here, and that interview is printed as widely in this country as in the United States. Now I wish you would do this: At the reception put in your own way what I have told you, and especially emphasize that Mr. Gladstone is imperilling his political career and whole future for the sake of what he believes would be justice to Ireland. He cannot go any further and hold his English, Scotch, and Welsh constituencies. He believes that he can pass the present bill and start Ireland on a career of Home Rule if he can receive the support of the Irish members. The Americans who believe in Mr. Gladstone and are all honest Home Rulers will think this is an indirect message from himself, and it would be if it were prudent for Mr. Gladstone to send the message."

On my return to New York I did as requested. The story was published and commented on everywhere, and whether it was due to American insistence or not, I do not know, but shortly after Mr. Gladstone succeeded in carrying his Home Rule bill through the House of Commons, but it was defeated by the Conservatives in the House of Lords.

His Irish policy is a tribute to Mr. Gladstone's judgment and foresight, because in the light and conditions of to-day it is perfectly plain that if the Gladstone measure had been adopted at that time, the Irish question

would not now be the most difficult and dangerous in British politics.

I had many talks with Mr. Parnell and made many speeches in his behalf and later for Mr. Redmond. I asked him on one occasion if the Irish desired complete independence and the formation of an independent government. He answered: "No, we want Home Rule, but to retain our connection in a way with the British Empire. The military, naval, and civil service of the British Empire gives great opportunities for our young men. Ireland in proportion to its population is more largely represented in these departments of the British Government than either England, Scotland, or Wales."

Incidental to the division in Mr. Gladstone's Cabinet, which had not at this time broken out, was the great vogue which a story of mine had. I was dining with Earl Spencer. He had been lord lieutenant of Ireland and was very popular. His wife especially had been as great a success as the vice-regent. He was called the Red Earl because of his flowing auburn beard. He was a very serious man, devoted to the public service and exceedingly capable. He almost adored Mr. Gladstone and grieved over the growing opposition in the Cabinet.

The guests at the dinner were all Gladstonians and lamenting these differences and full of apprehension that they might result in a split in the party. The earl asked me if we ever had such conditions in the United States. I answered: "Yes." Mr. Blaine, at that time at the head of President Harrison's Cabinet as secretary of state, had very serious differences with his chief, and the people wondered why he remained. Mr. Blaine told me this story apropos of the situation: The author of a

play invited a friend of his to witness the first production and sent him a complimentary ticket. During the first act there were signs of disapproval, which during the second act broke out into a riot. An excited man sitting alongside the guest of the playwright said: "Stranger, are you blind or deaf, or do you approve of the play?" The guest replied: "My friend, my sentiments and opinion in regard to this play do not differ from yours and the rest, but I am here on a free ticket. If you will wait a little while till I go out and buy a ticket, I will come back and help you raise hell."

The most brilliant member of Mr. Gladstone's Cabinet and one of the most accomplished, versatile, and eloquent men in Great Britain was Lord Rosebery. I saw much of him when he was foreign minister and also after he became prime minister. Lord Rosebery was not only a great debater on political questions, he was also the most scholarly orator of his country on educational, literary, and patriotic subjects. He gathered about him always the people whom a stranger pre-eminently desired to meet.

I recall one of my week-end visits to his home at Mentmore, which is one of the most delightful of my reminiscences abroad. He had taken down there the leaders of his party. The dinner lasted, the guests all being men, except Lady Rosebery, who presided, until after twelve o'clock. Every one privileged to be there felt that those four hours had passed more quickly and entertainingly than any in their experience.

It was a beautiful moonlight night and the very best of English weather, and we adjourned to the terrace. There were recalled personal experiences, incidents of travel from men who had been all over the world and in

critical situations in many lands, diplomatic secrets revealing crises seriously threatening European wars, and how these had been averted, alliances made and territories acquired, adventures of thrilling interest and personal episodes surpassing fiction. The company reluctantly separated when the rising sun admonished them that the night had passed.

It has been my good fortune to be the guest of eminent men in many lands and on occasions of memorable interest, but the rarest privilege for any one was to be the guest of Lord Rosebery, either at his city house or one of his country residences. The wonderful charm of the host, his tact with his guests, his talent for drawing people out and making them appear at their best, linger in their memories as red-letter days and nights of their lives.

All Americans took great interest in the career of Lord Randolph Churchill. His wife was one of the most beautiful and popular women in English society, and an American. I knew her father, Leonard Jerome, very well. He was a successful banker and a highly educated and cultured gentleman. His brother, William Jerome, was for a long time the best story-teller and one of the wittiest of New Yorkers.

Lord Randolph Churchill advanced very rapidly in British politics and became not only one of the most brilliant debaters but one of the leaders of the House of Commons. On one of my visits abroad I received an invitation from the Churchills to visit them at their country place. When I arrived I found that they occupied a castle built in the time of Queen Elizabeth, and in which few modern alterations had been made. It was historically a very unique and interesting structure.

Additions had been made to it by succeeding generations, each being another house with its own methods of ingress and egress. Lord Randolph said: "I welcome you to my ancestral home, which I have rented for three months."

Though this temporary residence was very ancient, yet its hospitalities were dispensed by one of the most up-to-date and progressive couples in the kingdom. In the intimacy of a house-party, not too large, one could enjoy the versatility, the charm, the wide information, the keen political acumen of this accomplished and magnetic British statesman. It was unfortunate for his country that from overwork he broke down so early in life.

No one during his period could surpass Baron Alfred Rothschild as host. His dinners in town, followed by exquisite musicales, were the social events of every season. He was, however, most attractive at his superb place in the country. A week-end with him there met the best traditions of English hospitality. In the party were sure to be men and women of distinction, and just the ones whom an American had read about and was anxious to meet.

Baron Rothschild was a famous musician and an ardent lover of music. He had at his country place a wonderfully trained orchestra of expert musicians. In the theatre he gave concerts for the enjoyment of his guests, and led the orchestra himself. Among the company was sure to be one or more of the most famous artists from the opera at Covent Garden, and from these experts his own leadership and the performance of his perfectly trained company received unstinted praise and applause. Baron Rothschild had the art so necessary

for the enjoyment of his guests of getting together the right people. He never risked the harmony of his house by inviting antagonists.

Lord Rothschild, the head of the house, differed entirely from his amiable and accomplished brother. While he also entertained, his mind was engrossed in business and affairs. I had a conference with him at the time of the Spanish-American War, which might have been of historical importance. He asked me to come and see him in the Rothschild banking-house, where the traditions of a century are preserved and unchanged. He said to me: "We have been for a long time the bankers of Spain. We feel the responsibility for their securities, which we have placed upon the market. The United States is so all-powerful in its resources and spirit that it can crush Spain. This we desire to avert. Spain, though weak and poor compared to the United States, has nevertheless the proudest people in the world, and it is a question of Spanish pride we have to deal with."

In answering him I said: "Lord Rothschild, it seems to me that if you had any proposition you should take it to Mr. John Hay, our accomplished minister."

"No," he said; "then it would become a matter of diplomacy and publicity. Now the Spanish Government is willing to comply with every demand the United States can make. The government is willing to grant absolute independence to Cuba, or what it would prefer, a self-governing colony, with relations like that of Canada to Great Britain. Spain is willing to give to the United States Porto Rico and the Philippine Islands, but she must know beforehand if these terms will be accepted before making the offer, because if an offer so

great as this and involving such a loss of territory and prestige should be rejected by the United States there would be a revolution in Spain which might overthrow not only the government but the monarchy. What would be regarded as an insult would be resented by every Spaniard to the bitter end. That is why I have asked you to come and wish you to submit this proposition to your president. Of course, I remain in a position, if there should be any publicity about it, to deny the whole thing."

The proposition unfortunately came too late, and Mr. McKinley could not stop the war. It was well known in Washington that he was exceedingly averse to hostilities and believed the difficulties could be satisfactorily settled by diplomacy, but the people were aroused to such an extent that they were determined not only to free Cuba but to punish those who were oppressing the Cubans.

One incident which received little publicity at the time was in all probability the match which fired the magazine. One of the ablest and most level-headed members of the Senate was Senator Redfield Proctor, of Vermont. The solidity of his character and acquirements and his known sense and conservatism made him a power in Congress, and he had the confidence of the people. He visited Cuba and wrote a report in which he detailed as an eyewitness the atrocities which the government and the soldiers were perpetrating. He read this report to Mr. McKinley and Senator Hanna. They both said: "Senator Proctor, if you read that to the Senate, our negotiations end and war is inevitable."

The president requested the senator to delay reporting to the Senate. The excitement and interest in that body

were never more unanimous and intense. I doubt if any senator could have resisted this rare opportunity not only to be the centre of the stage but to occupy the whole platform. Senator Proctor made his report and the country was aflame.

One summer I arrived in London and was suffering from a fearful attack of muscular rheumatism. I knew perfectly well that I had brought it on myself by overwork. I had suffered several attacks before, but this one was so acute that I consulted Sir Henry Thompson, at that time the acknowledged head of the British medical profession. He made a thorough examination and with most satisfactory result as to every organ.

"With your perfect constitution," he said, "this attack is abnormal. Now tell me of your day and every day at home. Begin with breakfast."

"I breakfast at a quarter of eight," I said.

"Then," continued the doctor, "give me the whole day."

"I arrive at my office," I said, "at nine. Being president of a great railway company, there is a large correspondence to be disposed of. I see the heads of the different departments and get in touch with every branch of the business. Then I meet committees of chambers of commerce or shippers, or of employees who have a grievance, and all this will occupy me until five o'clock, when I go home. I take a very short lunch, often at my desk, to save time. On arriving home I take a nap of ten or fifteen minutes, and then look over my engagements for the evening. If it is a speech, which will probably happen four evenings in a week, I prepare in the next hour and then deliver it at some public banquet

or hall. If I have accepted a formal address or, as we call them in America, orations, it is ground out on odd evenings, Sunday afternoon and night."

The doctor turned to me abruptly and said: "You ought to be dead. Now, you have the most perfect constitution and less impaired than any I have examined at your time of life. If you will follow the directions which I give you, you can be perfectly well and sound at the age of one hundred. If you continue your present life until seventy, you will have a nervous breakdown, and thereafter become a nuisance to yourself and everybody else. I advise absolute rest at a remote place in Switzerland. There you will receive no newspapers, and you will hear nothing from the outside world. You will meet there only English who are seeking health, and they will not speak to you. Devote your day to walking over the mountains, adding to your tramp as your strength increases, and lie for hours on the bank of a quiet stream there, and be intensely interested as you throw pebbles into it to see how wide you can make the circles from the spot where the pebble strikes the water."

I thought I understood my temperament better than the doctor, and that any rest for me was not solitude but entire change of occupation. So I remained in London and lunched and dined out every day for several weeks, with a week-end over every Sunday. In other ways, however, I adopted the doctor's directions and not only returned home cured, but have been free from rheumatism ever since.

I was in London at both the queen's fiftieth anniversary of her reign and her jubilee. The reverence and love the English people had for Queen Victoria was a

wonderful exhibition of her wisdom as a sovereign and of her charm and character as a woman. The sixty years of her reign were a wonderful epoch in the growth of her empire and in its relations to the world.

Once I said to a member of the Cabinet, who, as minister of foreign affairs had been brought in close contact with the queen: "I am very much impressed with the regard which the people have for Queen Victoria. What is her special function in your scheme of government?"

"She is invaluable," he answered, "to every prime minister and the Cabinet. The prime minister, after the close of the debate in the House of Commons every night, writes the queen a full report of what has occurred at that session. This has been going on for more than half a century. The queen reads these accounts carefully and has a most retentive memory. If these communications of the prime ministers were ever available to the public, they would present a remarkable contrast of the minds and the methods of different prime ministers and especially those two extreme opposites, Gladstone and Disraeli. The queen did not like Gladstone, because she said he always preached, but she had an intense admiration for Disraeli, who threw into his nightly memoranda all his skill not only as a statesman but a novelist. The queen also has been consulted during all these years on every crisis, domestic or foreign, and every matter of Cabinet importance. The result is that she is an encyclopædia. Very often there will be a dispute with some of the great powers or lesser ones, which is rapidly growing to serious proportions. We can find no report of its beginning. The queen, however, will remember just when the difficulty began, and why it was pushed aside and not settled, and who were

the principal actors in the negotiations. With that data we often arrive at a satisfactory settlement."

I remember one garden-party at Buckingham Palace. The day was perfect and the attendance phenomenally large and distinguished. While there were places on the grounds where a luncheon was served, the guests neglected these places and gathered about a large tent where the royalties had their refreshments. It was an intense curiosity, not so much to see their sovereign eat and drink, as to improve the opportunity to reverently gaze upon her at close range. The queen called various people whom she knew from this circle of onlookers for a familiar talk.

When the luncheon was served the attendant produced an immense napkin, which she spread over herself, almost from her neck to the bottom of her dress. A charming English lady, who stood beside me, said: "I know you are laughing at the economy of our Queen."

"On the contrary," I said, "I am admiring an example of carefulness and thrift which, if it could be universally known, would be of as great benefit in the United States as in Great Britain."

"Well," she continued, "I do wish that the dear old lady was not quite so careful."

At a period when the lives of the continental rulers were in great peril from revolutionists and assassins, the queen on both her fiftieth anniversary and her jubilee rode in an open carriage through many miles of London streets, with millions of spectators on either side pressing closely upon the procession, and there was never a thought that she was in the slightest danger. She was fearless herself, but she had on the triple armor of the overmastering love and veneration of the whole people.

Americans remembered that in the crisis of our Civil War it was the influence of the queen, more than any other, which prevented Great Britain recognizing the Southern Confederacy.

Among the incidents of her jubilee was the greatest naval demonstration ever known. The fleets of Great Britain were summoned from all parts of the globe and anchored in a long and imposing line in the English Channel. Mr. Ismay, at that time the head of the White Star Line, took the *Teutonic*, which had just been built and was not yet in regular commission, as his private yacht. He had on board a notable company, representing the best, both of men and women, of English life. He was the most generous of hosts, and every care taken for the individual comfort of his guests. In the intimacy for several days of such an excursion we all became very well acquainted. There were speeches at the dinners and dances afterwards on the deck for the younger people. The war-ships were illuminated at night by electric lights, and the launch of the *Teutonic* took us down one lane and up another through the long lines of these formidable defenders of Great Britain.

One day there was great excitement when a war-ship steamed into our midst and it was announced that it was the German emperor's. Even as early as that he excited in the English mind both curiosity and apprehension. One of the frequent questions put to me, both then and for years afterwards at English dinners, was: "What do you think of the German emperor?"

Shortly after his arrival he came on to the *Teutonic* with the Prince of Wales, afterwards King Edward VII. The prince knew many of the company and was most cordial all around. The emperor was absorbed in an

investigation of this new ship and her possibilities both in the mercantile marine and as a cruiser. I heard him say to the captain: "How are you armed?" The captain told him that among his equipment he had a new invention, a quick-firing gun. The emperor was immediately greatly excited. He examined the gun and questioned its qualities and possibilities until he was master of every detail. Then he turned to one of his officers and gave a quick order that the gun should be immediately investigated and all that were required should be provided for Germany.

I heard a picturesque story from a member of the court, of Queen Victoria's interest in all public affairs. There was then, as there is generally in European relations, some talk of war. The queen was staying at her castle at Osborne on the Isle of Wight. He said she drove alone down to the shore one night and sat there a long time looking at this great fleet, which was the main protection of her empire and her people. It would be interesting if one could know what were her thoughts, her fears, and her hopes.

The queen was constantly assisting the government in the maintenance of friendly relations with foreign powers by entertaining their representatives at Windsor Castle. When General Grant, after he retired from the presidency, made his trip around the world, the question which disturbed our American minister, when General Grant arrived in London, was how he could be properly received and recognized. Of course, under our usage, he had become a private citizen, and was no more entitled to official recognition than any other citizen. This was well known in the diplomatic circles. When the ambassadors and ministers of foreign countries in Lon-

don were appealed to, they unanimously said that as they represented their sovereigns they could not yield precedence to General Grant, but he must sit at the foot of the table. The Prince of Wales solved this question with his usual tact and wisdom. Under the recognized usage at any entertainment, the Prince of Wales can select some person as his special guest to sit at his right, and, therefore, precede everybody else. The prince made this suggestion to our minister and performed this courteous act at all functions given to General Grant. Queen Victoria supplemented this by extending the same invitation to General and Mrs. Grant to dine and spend the night with her at Windsor Castle, which was extended only to visiting royalty.

I remember that the Army of the Potomac was holding its annual meeting and commemoration at one of our cities when the cable announced that General Grant was being entertained by Queen Victoria at Windsor Castle. The conventions of diplomacy, which requires all communications to pass through the ambassador of one's country to the foreign minister of another country before it can reach the sovereign were not known to these old soldiers, so they cabled a warm message to General Grant, care of Queen Victoria, Windsor Castle, England.

One of the most delightful bits of humor in my recollections of journalistic enterprise was an editorial by a Mr. Alden, one of the editors of the *New York Times*. Mr. Alden described with great particularity, as if giving the details of the occurrence, that the messenger-boy arrived at Windsor Castle during the night and rang the front door-bell; that Her Majesty called out of the window in quite American style, "Who is there?" and

the messenger-boy shouted, "Cable for General Grant. Is he staying at this house?" I can only give a suggestion of Alden's fun, which shook the whole country.

One of the court officers said to me during the jubilee: "Royalties are here from every country, and among those who have come over is Liliuokalani, Queen of the Hawaiian Islands. She is as insistent of her royal rights as the Emperor of Germany. We have consented that she should be a guest at a dinner of our queen and spend the night at Windsor Castle. We have settled her place among the royalties in the procession through London and offered her the hussars as her guard of honor. She insists, however, that she shall have the same as the other kings, a company of the guards. Having recognized her, we are obliged to yield." The same officer told me that at the dinner the dusky queen said to Queen Victoria: "Your Majesty, I am a blood relative of yours."

"How so?" was the queen's astonished answer.

"Why," said Liliuokalani, "my grandfather ate your Captain Cook."

One of the most interesting of the many distinguished men who were either guests on the *Teutonic* or visited us was Admiral Lord Charles Beresford. He was a typical sailor of the highest class and very versatile. He made a good speech, either social or political, and was a delightful companion on all occasions. He had remarkable adventures all over the world, and was a word painter of artistic power. He knew America well and was very sympathetic with our ideals. I met him many times in many relations and always with increasing regard and esteem.

I was entertained by Lord Beresford once in the most original way. He had a country place about an hour from London and invited me to come down on a Sunday afternoon and meet some friends. It was a delightful garden-party on an ideal English summer day. He pressed me to stay for dinner, saying: "There will be a few friends coming, whom I am anxious for you to know."

The friends kept coming, and after a while Lady Beresford said to him: "We have set all the tables we have and the dining-room and the adjoining room can hold. How many have you invited?"

The admiral answered: "I cannot remember, but if we delay the dinner until a quarter of nine, I am sure they will all be here."

When we sat down we numbered over fifty. Lord Charles's abounding and irresistible hospitality had included everybody whom he had met the day before.

The butler came to Lord Charles shortly after we sat down and said: "My lord, it is Sunday night, and the shops are all closed. We can add nothing to what we have in the house, and the soup has given out."

"Well," said this admirable strategist, "commence with those for whom you have no soup with the fish. When the fish gives out, start right on with the next course, and so to the close of the dinner. In that way everybody will get something."

After a while the butler again approached the admiral and said: "My lord, the champagne is all gone."

"Well," said Lord Charles, "start in on cider."

It was a merry company, and they all caught on to the situation. The result was one of the most hilarious, enjoyable, and original entertainments of my life. It

lasted late, and everybody with absolute sincerity declared he or she had had the best time ever.

I was asked to meet Lord John Fisher, in a way a rival of Lord Beresford. Both were exceedingly able and brilliant officers and men of achievement, but they were absolutely unlike; one had all the characteristics of the Celt and the other of the Saxon.

One of the most interesting things in Lord Fisher's talk, especially in view of later developments, was his description of the discoveries and annexations to the British Empire, made by the British navy. In regard to this he said: "The British navy had been acquiring positions of strategic importance to the safety and growth of the empire from time immemorial, and some fool of a prime minister on a pure matter of sentiment is always giving away to our possible enemies one or the other of these advantageous positions." He referred especially to Heligoland, the gift of which to Germany had taken place not long before. If Heligoland, fortified like Gibraltar, had remained in the possession of the British Government, Germany would not have ventured upon the late war.

Lord Fisher exemplified what I have often met with in men who have won eminent distinction in some career, whose great desire was to have fame in another and entirely different one. Apparently he wished his friends and those he met to believe that he was the best storyteller in the world; that he had the largest stock of original anecdotes and told them better than anybody else. I found that he was exceedingly impatient and irritable when any one else started the inevitable "that reminds me," and he was intolerant with the story the other was trying to tell. But I discovered, also, that most of his

stories, though told with great enthusiasm, were very familiar, or, as we Americans would say, "chestnuts."

During my summer vacations I spent two weeks or more at Homburg, the German watering-place. It was at that time the most interesting resort on the continent. The Prince of Wales, afterwards King Edward VII, was always there, and his sister, the Dowager Empress of Germany, had her castle within a few miles. It was said that there was a quorum of both Houses of Parliament in Homburg while the prince was there, but his presence also drew representatives from every department of English life, the bench and the bar, writers of eminence of both sexes, distinguished artists, and people famous on both the dramatic and the operatic stage. The prince, with keen discrimination, had these interesting people always about him. There were also social leaders, whose entertainments were famous in London, who did their best to add to the pleasure of the visit of the prince. I met him frequently and was often his guest at his luncheons and dinners. He fell in at once in the Homburg way.

The routine of the cure was to be at the springs every morning at seven o'clock, to take a glass of water, walk half an hour with some agreeable companion, and repeat this until three glasses had been consumed. Then breakfast, and after that the great bathing-house at eleven o'clock. The bathing-house was a meeting-place for everybody. Another meeting-place was the open-air concerts in the afternoon. In the evening came the formal dinners and some entertainment afterwards.

Both for luncheon and dinner the prince always had quite a large company. He was a host of great charm, tact, and character. He had a talent of drawing out the

best there was in those about his table, and especially of making the occasion very agreeable for a stranger. Any one at his entertainments always carried away either in the people he met or the things that were said, or both, permanent recollections.

I do not think the prince bothered about domestic questions. He was very observant of the limitations and restrictions which the English Government imposes upon royalty. He was, however, very keen upon his country's foreign relations. In the peace of Europe he was an important factor, being so closely allied with the imperial houses of Germany and Russia. There is no doubt that he prevented the German Emperor from acquiring a dangerous control over the Czar. He was very fixed and determined to maintain and increase friendly relations between the United States and Great Britain. He succeeded, after many varied and long-continued efforts, in doing away with the prejudices and hostilities of the French towards the English, an accomplishment of infinite value to his country in these later years.

I was told that the prince required very little sleep, that he retired to bed late and was an early riser. I was awakened one night by his equerry calling me up, saying the prince was on the terrace of the Kursaal and wanted to see me. The lights were all out, everybody had gone, and he was sitting alone at a table illuminated by a single candle. What he desired was to discuss American affairs and become more familiar with our public men, our ideals, our policies, and especially any causes which could possibly be removed of irritation between his own country and ours. This discussion lasted till daylight.

Meeting him on the street one day, he stopped and

asked me to step aside into an opening there was in the hedge. He seemed laboring under considerable excitement, and said: "Why do the people in the United States want to break up the British Empire?"

I knew he referred to the Home Rule bill for Ireland, which was then agitating Parliament and the country, and also the frequent demonstrations in its favor which were occurring in the United States.

I said to him: "Sir, I do not believe there is a single American who has any thought of breaking up the British Empire. We are wedded to the federal principle of independent States, which are sovereign in their local affairs and home matters, but on everything you call imperial the United States is supreme. To vindicate this principle we fought a Civil War, in which we lost more lives, spent more money, destroyed more property, and incurred more debt than any contest of modern time. The success of the government has been so complete that the States which were in rebellion and their people are quite as loyal to the general government as those who fought to preserve it. The prosperity of the country, with this question settled, has exceeded the bounds of imagination. So Americans think of your trouble with Ireland in terms of our federated States, and believe that all your difficulties could be adjusted in the same way."

We had a long discussion in which he asked innumerable questions, and never referred to the subject again. I heard afterwards among my English friends that he who had been most hostile was becoming a Home Ruler.

At another time he wanted to know why our government had treated the British ambassador, Lord Sack-

ville West, so badly and ruined his career. The Sackville West incident was already forgotten, though it was the liveliest question of its time.

Cleveland was president and a candidate for re-election. Sackville West was the British ambassador. A little company of shrewd Republican politicians in California thought if they could get an admission that the British Government was interfering in our election in favor of Cleveland, it would be a fine asset in the campaign, and so they wrote to Lord Sackville West, telling him they were Englishmen who had become naturalized American citizens. In voting they were anxious to vote for the side which would be best for their native land; would he kindly and very confidentially advise them whether to support the Democratic or the Republican ticket. Sackville West swallowed the bait without investigation, and wrote them a letter advising them to vote the Democratic ticket.

There never had been such consternation in diplomatic circles in Washington. Of course, Mr. Cleveland and his supporters had to get out from under the situation as quickly and gracefully as possible.

The administration instantly demanded that the British Government should recall Lord Sackville West, which was done, and he was repudiated for his activity in American politics. It was curious that the prince had apparently never been fully informed of the facts, but had been misled by Sackville West's explanation, and the prince was always loyal to a friend.

One year Mr. James G. Blaine visited Homburg, and the prince at once invited him to luncheon. Blaine's retort to a question delighted every American in the place. One of the guests was the then Duke of Man-

chester, an old man and a great Tory. When the duke grasped that Blaine was a leading American and had been a candidate for the presidency of the United States, all his old Toryism was aroused, and he was back in the days of George III. To the horror of the prince, the duke said to Mr. Blaine: "The most outrageous thing in all history was your rebellion and separation from the best government on earth." He said much more before the prince could stop him.

Blaine, with that grace and tact for which he was so famous, smilingly said: "Well, your Grace, if George III had had the sense, tact, and winning qualities of his great-grandson, our host, it is just possible that we might now be a self-governing colony in the British Empire."

The answer relieved the situation and immensely pleased the host. Lord Rosebery once said in a speech that, with the tremendous growth in every element of greatness of the United States, if the American colonies had remained in the British Empire, with their preponderating influence and prestige, the capital of Great Britain might have been moved to New York and Buckingham Palace rebuilt in Central Park.

At another dinner one of the guests of the prince suddenly shot at me across the table the startling question: "Do you know certain American heiresses"—naming them—"now visiting London?"

I answered "Yes"—naming one especially, a very beautiful and accomplished girl who was quite the most popular *débutante* of the London season.

"How much has she?" he asked.

I named the millions which she would probably inherit. "But," I added, "before you marry an American

heiress, you better be sure that she can say the Lord's Prayer."

He said with great indignation that he would be astonished if any American girl could be recognized in English society who had been so badly brought up that she was not familiar with the Lord's Prayer.

"All of them are," I replied, "but few heiresses, unless they have come into their inheritance and can say 'Our Father, who art in heaven,' will inherit much, because American fathers are very speculative."

He continued to express his astonishment at this lack of religious training in an American family, while the prince enjoyed the joke so much that I was fearful in his convulsive laughter he would have a fit of apoplexy.

Once, at a dinner given by the prince, an old lady of very high rank and leading position said suddenly to me, and in a way which aroused the attention of the whole company: "Is it true that divorces are very common in America?"

I knew that a denial by me would not convince her or any others who shared in this belief, then very common in Europe. Of course, the prince knew better. I saw from his expression that he wished me to take advantage of the opportunity. I made up my mind quickly that the best way to meet this belief was by an exaggeration which would show its absurdity.

Having once started, the imaginative situation grew beyond my anticipation. I answered: "Yes, divorces are so common with us that the government has set aside one of our forty-odd States for this special purpose. It is the principal business of the authorities. Most of these actions for divorce take place at the capital, which is always crowded with great numbers of people from all

parts of the country seeking relief from their marital obligations."

"Did you ever visit that capital?" asked the prince.

"Yes, several times," I answered, "but not for divorce. My domestic relations have always been very happy, but it is also a famous health resort, and I went there for the cure."

"Tell us about your visit," said the prince.

"Well," I continued, "it was out of season when I was first there, so the only amusement or public occasions of interest were prayer-meetings."

The old lady asked excitedly: "Share meetings?" She had been a large and unfortunate investor in American stocks.

I relieved her by saying: "No, not share meetings, but religious prayer-meetings. I remember one evening that the gentleman who sat beside me turned suddenly to his wife and said: 'We must get out of here at once; the air is too close.' 'Why, no,' she said; 'the windows are all open and the breeze is fresh.' 'Yes,' he quickly remarked, 'but next to you are your two predecessors from whom I was divorced, and that makes the air too close for me.'"

The old lady exclaimed: "What a frightful condition!"

"Tell us more," said the prince.

"Well," I continued, "one day the mayor of the city invited me to accompany him to the station, as the divorce train was about to arrive. I found at the station a judge and one of the court attendants. The attendant had a large package of divorce decrees to which the seal of the court had been attached, and also the signature of the judge. They only required to have the name of the party desiring divorce inserted. Along-

side the judge stood a clergyman of the Established Church in full robes of his sacred office. When the passengers had all left the cars, the conductor jumped on to one of the car platforms and shouted to the crowd: 'All those who desire divorce will go before the judge and make their application.'

"When they had all been released by the court the conductor again called out: 'All those who have been accompanied by their partners, or where both have been to-day released from their former husbands and wives to be remarried, will go before the rector.' He married them in a body, whereupon they all resumed their places on the train. The blowing of the whistle and the ringing of the bell on the locomotive was the music of their first, second, or third honeymoon journey."

The old lady threw up her hands in horror and cried: "Such an impious civilization must come speedily not only to spiritual and moral destruction, but chaos."

Most of the company saw what an amazing caricature the whole story was and received it with great hilarity. The effect of it was to end, for that circle, at least, and their friends, a serious discussion of the universality of American divorces.

The prince was always an eager sportsman and a very chivalric one. At the time of one of the races at Cowes he became very indignant at the conduct of an American yachtsman who had entered his boat. It was charged by the other competitors that this American yachtsman violated all the unwritten laws of the contest.

After the race the prince said to me: "A yacht is a gentleman's home, whether it is racing or sailing about for pleasure. The owner of this yacht, to make her lighter and give her a better chance, removed all the

furniture and stripped her bare. He even went so far, I am told, that when he found the steward had left in his stateroom a tooth-brush, he threw it out of the port window."

It will be seen from these few anecdotes how intensely human was the Prince of Wales. He did much for his country, both as prince and king, and filled in a wise and able way the functions of his office. Certainly no official did quite so much for the peace of Europe during his time, and no royalty ever did more to make the throne popular with the people. I heard him speak at both formal and informal occasions, and his addresses were always tactful and wise.

While at Homburg we used to enjoy the delightful excursions to Nauheim, the famous nerve-cure place. I met there at one time a peculiar type of Americans, quite common in former years. They were young men who, having inherited fortunes sufficient for their needs, had no ambitions. After a strenuous social life at home and in Europe, they became hypochondriacs and were chasing cures for their imaginary ills from one resort to another.

One of them, who had reached middle life, had, of course, become in his own opinion a confirmed invalid. I asked him: "What brought you here? You look very well."

"That is just my trouble," he answered. "I look very well and so get no sympathy, but my nervous system is so out of order that it only takes a slight shock to completely disarrange it. For instance, the cause of my present trouble. I was dining in Paris at the house of a famous hostess, and a distinguished company was present. The only three Americans were two ladies and

myself. I was placed between them. You know one of these ladies, while a great leader at home, uses very emphatic language when she is irritated. The dinner, like most French dinners, with many courses, was unusually long. Suddenly this lady, leaning over me, said to her sister: 'Damn it, Fan, will this dinner never end?' The whole table was shocked and my nerves were completely shattered." The great war, as I think, exterminated this entire tribe.

I was delighted to find at Nauheim my old friends, Mark Twain and the Reverend Doctor Joseph Twichell, of Hartford, Conn. Doctor Twichell was Mark Twain's pastor at home. He was in college with me at Yale, and I was also associated with him in the governing corporation of Yale University. He was one of the finest wits and remarkable humorists of his time. Wit and humor were with him spontaneous, and he bubbled over with them. Mark Twain's faculties in that line were more labored and had to be worked out. Doctor Twichell often furnished in the rough the jewels which afterwards in Mark Twain's workshop became perfect gems.

I invited them to come over and spend the day and dine with me in the evening at Homburg. Mark Twain at that time had the reputation in England of being the greatest living wit and humorist. It soon spread over Homburg that he was in town and was to dine with me in the evening, and requests came pouring in to be invited. I kept enlarging my table at the Kursaal, with these requests, until the management said they could go no farther. I placed Mark Twain alongside Lady Cork, one of the most brilliant women in England. In the course of years of acquaintance I had met Mark Twain under many conditions. He was very uncertain in a

social gathering. Sometimes he would be the life of the occasion and make it one to be long remembered, but generally he contributed nothing. At this dinner, whenever he showed the slightest sign of making a remark, there was dead silence, but the remark did not come. He had a charming time, and so did Lady Cork, but the rest of the company heard nothing from the great humorist, and they were greatly disappointed.

The next morning Mark Twain came down to the springs in his tramping-suit, which had fairly covered the continent. I introduced him to the Prince of Wales, and he was charmed with him in their hour of walk and talk. At dinner that evening the prince said to me: "I would have invited Mark Twain this evening, if I thought he had with him any dinner clothes."

"At my dinner last night," I said, "he met every conventional requirement."

"Then," continued the prince, "I would be much obliged if you would get him for dinner with me to-morrow evening."

It was very much the same company as had dined with the prince the night before. Again Twain was for a long time a complete disappointment. I knew scores of good things of his and tried my best to start him off, but without success. The prince, who was unusually adroit and tactful in drawing a distinguished guest out, also failed. When the dinner was over, however, and we had reached the cigars, Mark Twain started in telling a story in his most captivating way. His peculiar drawl, his habit in emphasizing the points by shaking his bushy hair, made him a dramatic narrator. He never had greater success. Even the veteran Mark himself was astonished at the uproarious laughter which greeted

almost every sentence and was overwhelming when he closed.

There are millions of stories in the world, and several hundred of them good ones. No one knew more of them than Mark Twain, and yet out of this vast collection he selected the one which I had told the night before to the same company. The laughter and enjoyment were not at the story, but because the English had, as they thought, caught me in retailing to them from Mark Twain's repertoire one of his stories. It so happened that it was a story which I had heard as happening upon our railroad in one of my tours of inspection. I had told it in a speech, and it had been generally copied in the American newspapers. Mark Twain's reputation as the greatest living humorist caused that crowd to doubt the originality of my stories.

Mark had declined the cigars, but the prince was so delighted that he offered him one of the highly prized selection from his own case. This drew from him a story, which I have not seen in any of his books. I have read Mark Twain always with the greatest pleasure. His books of travel have been to me a source of endless interest, and his "Personal Recollections of Joan of Arc" is the best representation of the saint and heroine that I know.

When the prince offered him the cigar, Mark said: "No, prince, I never smoke. I have the reputation in Hartford, Conn., of furnishing at my entertainments the worst of cigars. When I was going abroad, and as I would be away for several years, I gave a reception and invited all my friends. I had the governor of the State of Connecticut and the judges of the highest courts, and the most distinguished members of the legislature. I

had the leading clergymen and other citizens, and also the president and faculty of Yale University and Trinity College.

"At three o'clock in the afternoon my butler, who is a colored man, Pompey by name, came to me and said: 'Mr. Clemens, we have no cigars.' Just then a pedler's wagon stopped at the gate. In England they call them cheap jacks. I hailed the merchant and said: 'What have you in your wagon?' 'Well,' he answered, 'I have some Gobelin tapestries, Sèvres china, and Japanese cloisonné vases, and a few old masters.' Then I said to him: 'I do not want any of those, but have you cigars, and how much?' The pedler answered: 'Yes, sir, I have some excellent cigars, which I will sell you at seventeen cents a barrel.' I have to explain that a cent is an English farthing. Then I told him to roll a barrel in."

"It was a great occasion, one of the greatest we ever had in the old State of Connecticut," continued Mark, "but I noticed that the guests left unusually early after supper. The next morning I asked the butler why they left so early. 'Well,' he said, 'Mr. Clemens, everybody enjoyed the supper, and they were all having a good time until I gave them the cigars. After the gentleman had taken three puffs, he said: "Pomp, you infernal nigger, get me my hat and coat quick." When I went out, my stone walk, which was one hundred yards long from the front door to the gate, was just paved with those cigars.'" This specimen of American exaggeration told in Mark Twain's original way made a great hit.

I met Mark Twain at a theatrical supper in London given by Sir Henry Irving. It was just after his publishing firm had failed so disastrously. It was a notable

company of men of letters, playwrights, and artists. Poor Mark was broken in health and spirits. He tried to make a speech, and a humorous one, but it saddened the whole company.

I met him again after he had made the money on his remarkable lecture tour around the world, with which he met and paid all his debts. It was an achievement worthy of the famous effort of Sir Walter Scott. Jubilant, triumphant, and free, Mark Twain that night was the hero never forgotten by any one privileged to be present.

One year, after strenuous work and unusual difficulties, which, however, had been successfully met, I was completely exhausted. I was advised to take a short trip to Europe, and, as usual, the four weeks' change of air and occupation was a complete cure. I decided to include Rome in my itinerary, though I felt that my visit would be something like the experience of Phineas Fogg, who did the whole of Europe and saw all there was of it in ten days.

When I arrived in the Eternal City, my itinerary gave me four days there. I wanted to see everything and also to meet, if possible, one of the greatest of popes, Leo XIII. I was armed only with a letter from my accomplished and distinguished friend, Archbishop Corrigan. I secured the best-known guide, who informed me that my efforts to see the sights within my limited time would be impossible. Nevertheless, the incentive of an extra large commission dependent upon distances covered and sights seen, led to my going through the streets behind the best team of horses in Rome and pursued by policemen and dogs, and the horses urged on by

a driver frantic for reward, and a guide who professionally and financially was doing the stunt of his life. It was astounding how much ground was really covered in the city of antiquities and art by this devotion to speed and under competent guidance.

When I asked to see the pope, I was informed that his health was not good and audiences had been suspended. I wrote a letter to the cardinal-secretary, enclosing Archbishop Corrigan's letter, and stated my anxiety to meet His Holiness and the limited time I had. A few hours afterwards I received a letter from the cardinal, stating that the Holy Father appreciated the circumstances, and would be very glad to welcome me in private audience at eleven o'clock the next morning.

When I arrived at the Vatican I was received as a distinguished visitor. The papal guards were turned out, and I was finally ushered into the room of Cardinal Merry del Val. He was a young man then and an accomplished diplomat, and most intimately informed on all questions of current interest. Literature, music, drama, political conditions in Europe were among his accomplishments. He said the usual formula when a stranger is presented to the pope is for the guest to kneel and kiss his ring. The pope has decided that all this will be omitted in your case. He will receive you exactly as an eminent foreigner calling by appointment upon the President of the United States.

When I was ushered into the presence of the pope he left his throne, came forward, grasped me cordially by the hand, and welcomed me in a very charming way. He was not a well man, and his bloodless countenance was as white and pallid as his robes. This was all relieved, however, by the brilliancy of his wonderful eyes.

After a few preliminary remarks he plunged into the questions in which he was deeply interested. He feared the spread of communism and vividly described its efforts to destroy the church, ruin religion, extirpate faith, and predicted that if successful it would destroy civilization.

I told him that I was deeply interested in the encyclical he had recently issued to reconcile or make more harmonious the relations between capital and labor. He commenced speaking upon that subject, and in a few minutes I saw that I was to be privileged to hear an address from one who as priest and bishop had been one of the most eloquent orators of the age. In his excitement he leaned forward, grasping the arms of the throne, the color returned to his cheeks, his eyes flashed, his voice was vibrant, and I was the audience, the entranced audience of the best speech I ever heard upon the question of labor and capital.

I was fearful on account of his health, that the exertion might be too great, and so arose to leave. He again said to me, and taking my hand: "I know all about you and am very grateful to you that in your official capacity as president of the New York Central Railroad you are treating so fairly the Catholics. I know that among your employees twenty-eight thousand are of the Catholic faith, and not one of them has ever known any discrimination because of their belief, but all of them have equal opportunities with the others for the rewards of their profession and protection in their employment."

The next day he sent a special messenger for a renewal of the conversation, but unhappily I had left Rome the night before.

During my stay in Rome of four days I had visited

most of its antiquities, its famous churches, and spent several hours in the Vatican gallery. Our American minister, one of the most accomplished of our diplomats, Mr. William Potter, had also given me a dinner, where I was privileged to meet many celebrities of the time.

Among English statesmen I found in Lord Salisbury an impressive figure. In a long conversation I had with him at the Foreign Office he talked with great freedom on the relations between the United States and Great Britain. He was exceedingly anxious that friendly conditions should continue and became most cordial.

The frequent disposition on the part of American politicians to issue a challenge or create eruptions disturbed him. I think he was in doubt when President Cleveland made his peremptory demands on the Venezuela boundary question if the president recognized their serious importance both for the present and the future. He, however, reluctantly yielded to the arbitration, won a complete victory, and was satisfied that such irritating questions were mainly political and for election purposes, and had better be met in a conciliatory spirit.

I remember a garden-party at Hatfield House, the historical home of the Cecils, given in honor of King Victor Emmanuel III, who had recently come to the throne. Lord Salisbury was of gigantic proportions physically, while the king was undersized. The contrast between the two was very striking, especially when they were in animated conversation—the giant prime minister talking down to His Majesty, and he with animated gestures talking up to the premier.

It is not too great a stretch of imagination, when one knows how traditional interviews and conversations be-

tween European rulers affect their relations, present and future, to find in that entertainment and conference that the seed there was sown for the entrance of Italy, at one of the crises of the Great War, on the side of the Allies and against Germany, to whom she was bound by the Triple Alliance.

Mr. Gladstone said to me at one time: "I have recently met a most interesting countryman of yours. He is one of the best-informed and able men of any country whom I have had the pleasure of talking with for a long time, and he is in London now. I wish you would tell me all about him."

Mr. Gladstone could not recall his name. As there were a number of American congressmen in London, I asked: "Was he a congressman?"

"No," he answered; "he had a more important office."

I then remembered that DeWitt Clinton, when a United States senator, resigned to become mayor of the City of New York. On that inspiration I asked: "Mayor of the City of New York?"

"Yes, that is it," Mr. Gladstone answered.

I then told him that it was Abram S. Hewitt, and gave him a description of Mr. Hewitt's career. Mr. Gladstone was most enthusiastic about him.

It was my fortune to know Mr. Hewitt very well for many years. He richly merited Mr. Gladstone's encomium. He was one of the most versatile and able Americans in public or private life during his time. His father was an English tenant-farmer who moved with his family to the United States. Mr. Hewitt received a liberal education and became a great success both in business and public life. He was much more than a business

man, mayor of New York, or a congressman—he was public-spirited and a wise reformer.

Mr. Hewitt told me two interesting incidents in his career. When he visited England he was received with many and flattering attentions. Among his invitations was a week-end to the home of the nobleman upon whose estates his father had been a tenant-farmer. When Mr. Hewitt told the nobleman, who was entertaining him as a distinguished American, about his father's former relations as one of his tenants, the nobleman said: "Your father made a great mistake in giving up his farm and emigrating to the United States. He should have remained here."

Mr. Hewitt said: "But, my lord, so far as I am concerned I do not think so."

"Why?" asked his lordship.

"Because," answered Mr. Hewitt, "then I could never have been a guest on equal terms in your house."

Mr. Hewitt was one of the foremost iron founders and steel manufacturers of the country. At the time of our Civil War our government was very short of guns, and we were unable to manufacture them because we did not know the secret of gun-metal.

The government sent Mr. Hewitt abroad to purchase guns. The English gunmakers at once saw the trouble he was in and took advantage of it. They demanded prices several times greater than they were asking from other customers, and refused to give him any information about the manufacture of gun-metal.

After he had made the contract, with all its exorbitant conditions, he went to his hotel and invited the foreman of each department of the factory to meet him. They all came. Mr. Hewitt explained to them his mission,

and found that they were sympathetic with Mr. Lincoln and his administration and the Union cause. Then he told them of the trouble he had had with their employers, and the hard terms which they had imposed. He asked them then all about the manufacture of gun-metal. Each one of the foremen was very clear and explicit as to his part, and so when they had all spoken, Mr. Hewitt, with his expert knowledge of the business, knew all the secrets of the manufacture of gun-metal, which he, of course, gave to the government at Washington for use in their several arsenals and shops.

"Now," he said to his guests, "you have done me a great favor. I will return it. Your company is obliged by the contract to deliver this immense order within a limited time. They are going to make an enormous amount of money out of it. You strike and demand what you think is right, and you will get it immediately."

The gun company made a huge profit but had to share some of it with their workers. It was an early instance of the introduction of profit-sharing, which has now become common all over the world.

One of the most interesting Englishmen, whom I saw much of both in London and in the United States, was Sir Henry Irving. The world of art, drama, and history owes much to him for his revival of Shakespeare. Irving was a genius in his profession, and in private life perfectly delightful.

He gave me a dinner and it was, like everything he did, original. Instead of the usual formal entertainment, he had the dinner at one of the old royal castles in the country, which had become a very exclusive hotel. He carried us out there in coaches.

The company of authors, playwrights, and men of affairs made the entertainment late and the evening memorable. Returning home on the top of the coach, the full moon would appear and reappear, but was generally under a cloud. Irving remarked: "I do much better with that old moon in my theatre. I make it shine or obscure it with clouds, as the occasion requires."

I received a note from him at the time of his last visit to the United States, in which he said that a friend from the western part of the country was giving him a dinner at Delmonico's to precede his sailing in the early morning on his voyage home. The company was to be large and all good friends, and he had the positive assurance that there would be no speaking, and wished I would come.

The dinner was everything that could be desired. The company was a wonderful one of distinguished representatives of American life. The hours passed along rapidly and joyously, as many of these original men contributed story, racy adventure, or song.

Suddenly the host arose and said: "Gentlemen, we have with us to-night—" Of course, that meant an introductory speech about Irving and a reply from the guest. Irving turned to me, and in his deepest and most tragic Macbeth voice said: "God damn his soul to hell!" However, he rose to the occasion, and an hour or so afterwards, when everybody else had spoken, not satisfied with his first effort, he arose and made a much better and longer speech. He was an admirable after-dinner speaker as well as an unusual actor. His wonderful presentations, not only of Shakespeare's but of other dramas, did very much for the stage both in his own country and in ours.

Those who heard him only in his last year had no

conception of him in his prime. In his later years he fell into the fault, so common with public speakers and actors, of running words together and failing to articulate clearly. I have known a fine speech and a superior sermon and a great part in a play ruined because of the failure to articulate clearly. The audience could not follow the speaker and so lost interest.

Sir Henry told me a delightful story about Disraeli. A young relative of Irving's took orders and became a clergyman in the Established Church. At the request of Irving, Disraeli appointed this young man one of the curates at Windsor.

One day the clergyman came to Irving in great distress and said: "The unexpected has happened. Every one has dropped out, and I have been ordered to preach on Sunday."

Irving took him to see Disraeli for advice. The prime minister said to the young clergyman: "If you preach thirty minutes, Her Majesty will be bored. If you preach fifteen minutes, Her Majesty will be pleased. If you preach ten minutes, Her Majesty will be delighted."

"But," said the young clergyman, "my lord, what can a preacher possibly say in only ten minutes?"

"That," answered the statesman, "will be a matter of indifference to Her Majesty."

Sir Frederick Leighton, the eminent English artist, and at one time president of the Royal Academy, was one of the most charming men of his time. His reminiscences were delightful and told with rare dramatic effect. I remember a vivid description which he gave me of the wedding of one of the British royalties with a

German princess. Sir Frederick was one of the large and distinguished delegation which accompanied the prince.

The principality of the bride's father had been shorn of territory, power, and revenue during the centuries. Nevertheless, at the time of the wedding he maintained a ministry, the same as in the Middle Ages, and a miniature army. Palaces, built centuries before, housed the Cabinet.

The minister of foreign affairs came to Sir Frederick and unbosomed himself of his troubles. He said: "According to the usual procedure I ought to give a ball in honor of the union of our house with the royal family of England. My palace is large enough, but my salary is only eight hundred a year, and the expense would eat up the whole of it."

Sir Frederick said: "Your Excellency can overcome the difficulty in an original way. The state band can furnish the music, and that will cost nothing. When the time comes for the banquet, usher the guests with due ceremony to a repast of beer and pretzels."

The minister followed the instructions. The whole party appreciated the situation, and the minister was accredited with the most brilliant and successful ball the old capital had known for a century.

For several years one of the most interesting men in Europe was the Duke d'Aumale, son of Louis Philippe. He was a statesman and a soldier of ability and a social factor of the first rank. He alone of the French royalty was relieved from the decree of perpetual banishment and permitted to return to France and enjoy his estates. In recognition of this he gave his famous château and

property at Chantilly to the French Academy. The gift was valued at ten millions of dollars. In the château at Chantilly is a wonderful collection of works of art.

I remember at one dinner, where the duke was the guest of honor, those present, including the host, were mostly new creations in the British peerage. After the conversation had continued for some time upon the fact that a majority of the House of Lords had been raised to the peerage during the reign of Queen Victoria, those present began to try and prove that on account of their ancient lineage they were exempt from the rule of parvenu peers. The duke was very tolerant with this discussion and, as always, the soul of politeness.

The host said: "Your Royal Highness, could you oblige us with a sketch of your ancestry?"

"Oh, certainly," answered the duke; "it is very brief. My family, the Philippes, are descendants from Æneas of Troy, and Æneas was the son of Venus." The mushrooms seemed smaller than even the garden variety.

The duke was talking to me at one time very interestingly about the visit of his father to America. At the time of the French Revolution his father had to flee for his life and came to the United States. He was entertained at Mount Vernon by Washington. He told me that after his father became King of France, he would often hesitate, or refuse to do something or write something which his ministers desired. The king's answer always was: "When I visited that greatest man of all the world, General Washington, at his home, I asked him at one time: 'General, is it not possible that in your long and wonderful career as a soldier and statesman that you have made mistakes?' The general answered: 'I have never done anything which I cared to recall or said

anything which I would not repeat,' and the king would say: 'I cannot do that or sign that, because if I do I cannot say for myself what General Washington said of himself.'"

The duke asked me to spend a week-end with him at Chantilly, and it is one of the regrets of my life that I was unable to accept.

I happened to be in London on two successive Sundays. On the first I went to Westminster Abbey to hear Canon Farrar preach. The sermon was worthy of its wonderful setting. Westminster Abbey is one of the most inspiring edifices in the world. The orator has to reach a high plane to be worthy of its pulpit. I have heard many dull discourses there because the surroundings refuse to harmonize with mediocrity. The sermon of Canon Farrar was classic. It could easily have taken a place among the gems of English literature. It seemed to me to meet whatever criticism the eminent dead, buried in that old mausoleum, might have of these modern utterances. I left the Abbey spiritually and mentally elated.

The next Sunday I went to hear Charles Spurgeon. It was a wonderful contrast. Spurgeon's Metropolitan Tabernacle was a very plain structure of immense proportions but with admirable acoustics. There was none of the historic enshrining the church, which is the glory of Westminster Abbey, no church vestments or ceremonials.

Mr. Spurgeon, a plain, stocky-looking man, came out on the platform dressed in an ordinary garb of black coat, vest, and trousers. It was a vast audience of what might be called middle-class people. Mr. Spurgeon's sermon was a plain, direct, and exceedingly forcible

ble appeal to their judgment and emotions. There was no attempt at rhetoric, but hard, hammerlike blows. As he rose in his indignation and denunciation of some current evils, and illustrated his argument with the Old Testament examples of the punishment of sinners, the audience became greatly excited. One of the officers of the church, in whose pew I sat, groaned aloud and gripped his hands so that the nails left their mark. Others around him were in the same frame of mind and spirit.

I saw there and then that the men who fought with Cromwell and won the battle of Naseby had in modern England plenty of descendants. They had changed only in outward deference to modern usages and conditions. If there had been occasion, Mr. Spurgeon could have led them for any sacrifice to what they believed to be right. I felt the power of that suppressed feeling—I would not say fanaticism, but intense conscientiousness—which occasionally in elections greatly surprises English politicians.

Canon Farrar's sermon easily takes its place among the selected books of the library. Spurgeon's address was straight from the shoulder, blow for blow, for the needs of the hour.

One of the novel incidents of the generous hospitality which I enjoyed every year in London was a dinner at the Athenæum Club given to me by one of the members of the government at that time. He was a gentleman of high rank and political importance. There were twenty-six at the dinner, and it was a representative gathering.

At the conclusion our host made a very cordial speech on more intimate relations between the United States

and Great Britain, and then in a complimentary phrase introduced me, saying: "I hope you will speak freely and without limit."

I was encouraged by a most sympathetic audience and had a good time during my effort. No one else was called upon. My host was complimentary and said: "Your speech was so satisfactory that I thought best not to have any more."

Some time afterwards he said to me: "Many of my friends had heard of you but never heard you, so I made up my mind to give them the opportunity, and what was really a purely social affair for every other guest, I turned into an international occasion just to draw you out. However, the fraud, if it was a fraud, was an eminent success."

No one in England did more for Americans than Sir Henry Lucy. Every American knew all about him, because of his reputation, and particularly because he was the author of that most interesting column in *Punch* called the "Essence of Parliament."

At his luncheons he gathered eminent men in public life and in the literary and journalistic activities of Great Britain. These luncheons were most informal, and under the hospitable genius of Lucy the guests became on intimate terms. There was no table in London where so many racy stories and sometimes valuable historical reminiscences could be heard.

To be a guest at one of Sir Lucy's luncheons was for an American to meet on familiar terms with distinguished men whom he knew all about and was most anxious to see and hear.

At a large dinner I had a pleasant encounter with Sir

Henry. In order to meet another engagement, he tried to slip quietly out while I was speaking. I caught sight of his retreating figure and called loudly the refrain of the familiar song, "Linger longer, Lucy." The shout of the crowd brought Sir Henry back, and the other entertainment lost a guest.

In several of my visits to London I went to see not only places of interest but also houses and streets made famous in English literature. In one of my many trips to St. Paul's Cathedral I was looking at the tomb of the Duke of Wellington in the crypt and also at the modest tomb of Cruikshank, the artist, near by.

The superintendent asked me who I was and many questions about America, and then said: "Many Americans come here, but the most remarkable of them all was Colonel Robert G. Ingersoll. He was very inquisitive and wanted to know all about Wellington's tomb. I told him that the duke's body was first put in a wooden coffin, and this was incased in steel; that this had made for it a position in a stone weighing twenty tons and over that was a huge stone weighing forty tons. He gave me a slap on the back which sent me flying quite a distance and exclaimed: 'Old man, you have got him safe. If he ever escapes cable at my expense to Robert G. Ingersoll, Peoria, Illinois, U. S. A.'"

I had an opportunity to know that the war by Germany against France and England was a surprise to both countries. While in London during part of June, 1914, I met Cabinet ministers and members of Parliament, and their whole thought and anxiety were concentrated on the threatened revolution in Ireland.

The Cabinet had asked the king to intervene and he had called representatives of all parties to meet him at Buckingham Palace. After many consultations he declared settlement or compromise were impossible. The situation was so critical that it absorbed the attention of the government, the press, and the public.

About the first of July I was in Paris and found the French worried about their finances and the increase in their military expenses which were reaching threatening figures. The syndicate of French bankers were seriously alarmed. There was no suspicion of German purpose and preparations for attack.

While in Geneva a few weeks afterwards I became alarmed by letters from relatives in Germany who were socially intimate with people holding very important positions in the government and the army, and their apprehensions from what their German friends told them and what they saw led to their joining us in Switzerland.

One day the Swiss refused to take foreign money or to make exchange for Swiss, or to cash letters of credit or bank checks. I immediately concluded that the Swiss bankers knew of or suspected Germany's hostile intentions, and with only two hours, and two families with their trunks to pack, we managed to reach and secure accommodations on the regular train for Paris. There was nothing unusual either at the railroad station or in the city.

One of the amusing incidents which are my life-preservers occurred at the station. Two elderly English spinsters were excitedly discussing the currency trouble. One of them smoothed out a bank of England note and said to her sister: "There, Sarah, is a bank of England note which has been good as gold all over the world

since Christ came to earth, and these Swiss pigs won't take it."

I told this incident afterwards to a banker in London. He said they were very ignorant women, there were no bank of England notes at that time.

German hostility developed so rapidly that our train was the last which left Switzerland for France for nearly two months. We were due in Paris at ten o'clock in the evening, but did not arrive until the next morning because of the mobilization of French recruits.

The excitement in Paris was intense. A French statesman said to me: "We are doing our best to avoid war. Our troops are kept ten kilometres from the frontier, but the Germans have crossed and seized strategic points. They will hear nothing and accept nothing and are determined to crush us if they can."

From all ranks of the people was heard: "We will fight to the last man, but we are outnumbered and will be destroyed unless England helps. Will England help? Will England help?" I have been through several crises but never witnessed nor felt such a reaction to ecstatic joy as occurred when Great Britain joined France.

The restrictions on leaving Paris required time, patience, and all the resources of our Embassy to get us out of France. The helpfulness, resourcefulness, and untiring efforts of our Ambassador, Myron T. Herrick, won the gratitude of all Americans whom the war had interned on the continent and who must get home.

There was a remarkable change in England. When we left in July there was almost hysteria over the threatening civil war. In October the people were calm though involved in the greatest war in their history. They

did not minimize the magnitude of the struggle, or the sacrifices it would require. There was a characteristic grim determination to see the crisis through, regardless of cost. Cabinet ministers whom I met thought the war would last three years.

The constant appeal to me, as to other Americans, was, "When will you join us? If we fail it is your turn next. It is autocracy and militarism against civilization, liberty, and representative government for the whole world."

We had a perilous and anxious voyage home and found few grasping the situation or working to be prepared for the inevitable, except Theodore Roosevelt and General Wood.

XX

ORATORS AND CAMPAIGN SPEAKERS

During my college days at Yale Wendell Phillips, William Lloyd Garrison, and Henry Ward Beecher were frequent lecturers, and generally on the slavery question. I have heard most of the great orators of the world, but none of them produced such an immediate and lasting effect upon their audience as Wendell Phillips. He was the finest type of a cultured New Englander. He was the recipient of the best education possible in his time and with independent means which enabled him to pursue his studies and career. Besides, he was one of the handsomest men I ever saw upon the platform, and in his inspired moments met one's imaginative conception of a Greek god.

Phillips rarely made a gesture or spoke above the conversational, but his musical voice reached the remotest corners of the hall. The eager audience, fearful of losing a word, would bend forward with open mouths as well as attentive ears. It was always a hostile audience at the beginning of Mr. Phillips's address, but before the end he swayed them to applause, tears, or laughter, as a skilled performer upon a perfect instrument. His subject was nearly always slavery, his views very extreme and for immediate abolition, but at that time he had a very small following. Nevertheless, his speeches, especially because of the riots and controversies they caused, set people thinking, and largely increased the hostility to slavery, especially to its extension.

I met Mr. Phillips one evening, after a lecture, at the house of Professor Goodrich. He was most courtly and considerate to students and invited questions. While I was charmed, even captivated, by his eloquence, I had at that time very little sympathy with his views. I said to him: "Mr. Phillips, your attack to-night upon Caleb Cushing, one of the most eminent and able public men in the country, was very vitriolic and most destructive of character and reputation. It seems so foreign to all I know of you that, if you will pardon me, I would like to know why you did it." He answered: "I have found that people, as a rule, are not interested in principles or their discussions. They are so absorbed in their personal affairs that they do very little thinking upon matters outside their business or vocation. They embody a principle in some public man in whom they have faith, and so that man stands for a great body of truth or falsehood, and may be exceedingly dangerous because a large following connects the measure with the man, and, therefore, if I can destroy the man who represents a vicious principle I have destroyed the principle." It did not strike me favorably at the time, nor does it now. Nevertheless, in politics and in the battles of politics it represents a dynamic truth.

The perfect preparation of a speech was, in Wendell Phillip's view, that one in which the mental operations were assisted in no way by outside aid. Only two or three times in his life did he prepare with pen and paper an address, and he felt that these speeches were the poorest of his efforts. He was constantly studying the art of oratory. In his daily walks or in his library metaphors and similes were suggested, which he tucked away in his memory, and he even studied action as he watched

the muscular movements of men whom he saw in public places. He believed that a perfect speech could be prepared only after intense mental concentration. Of course the mind must first be fortified by such reading as provided facts. Having thus saturated his mind with information, he would frequently lie extended for hours upon his sofa, with eyes closed, making mental arrangements for the address. In fact, he used to write his speeches mentally, as Victor Hugo is said to have written some of his poems. A speech thus prepared, Phillips thought, was always at the command of the speaker. It might vary upon every delivery, and could be altered to meet emergencies with the audience, but would always be practically the same.

This method of preparation explains what has been a mystery to many persons. The several reports of Phillips's lecture on "The Lost Arts" differ in phraseology and even in arrangement. Mr. Phillips did not read his speeches in print, and, therefore, never revised one. He was firmly of the belief that the printed thought and the spoken thought should be expressed in different form, and that the master of one form could not be the master of the other.

I met many young men like myself in the canvass of 1856, and also made many acquaintances of great value in after-life. It was difficult for the older stump speakers to change the addresses they had been delivering for years, so that the young orators, with their fresh enthusiasm, their intense earnestness and undoubting faith, were more popular with the audiences, who were keenly alive to the issues raised then by the new Republican party.

The Republican party was composed of Whigs and

anti-slavery Democrats. In this first campaign the old-timers among the Whigs and the Democrats could not get over their long antagonism and distrusted each other. The young men, whether their ancestry was Democratic or Whig, were the amalgam which rapidly fused all elements, so that the party presented a united front in the campaign four years afterwards when Mr. Lincoln was elected.

In the course of that campaign I had as fellow speakers many times on the platform statesmen of national reputation. These gentlemen, with few exceptions, made heavy, ponderous, and platitudinous speeches. If they ever had possessed humor they were afraid of it. The crowd, however, would invariably desert the statesman for the speaker who could give them amusement with instruction. The elder statesmen said by way of advice: "While the people want to be amused, they have no faith in a man or woman with wit or anecdote. When it comes to the election of men to conduct public affairs, they invariably prefer serious men." There is no doubt that a reputation for wit has seriously impaired the prospects of many of the ablest men in the country.

The only exception to this rule was Abraham Lincoln. But when he ran for president the first time he was comparatively unknown outside his State of Illinois. The campaign managers in their literature put forward only his serious speeches, which were very remarkable, especially the one he delivered in Cooper Union, New York, which deeply impressed the thoughtful men of the East. He could safely tell stories and jokes after he had demonstrated his greatness as president. Then the people regarded his story-telling as the necessary relief and relaxation of an overburdened and overworked public ser-

vant. But before he had demonstrated his genius as an executive, they would probably have regarded these same traits as evidences of frivolity, unfitting the possessor for great and grave responsibilities.

I had a very interesting talk on the subject with General Garfield, when he was running for president. He very kindly said to me: "You have every qualification for success in public life; you might get anywhere and to the highest places except for your humor. I know its great value to a speaker before an audience, but it is dangerous at the polls. When I began in politics, soon after graduation, I found I had a keen sense of humor, and that made me the most sought-after of all our neighborhood speakers, but I also soon discovered it was seriously impairing the public opinion of me for responsible positions, so I decided to cut it out. It was very difficult, but I have succeeded so thoroughly that I can no longer tell a story or appreciate the point of one when it is told to me. Had I followed my natural bent I should not now be the candidate of my party for President of the United States."

The reason so few men are humorists is that they are very shy of humor. My own observations in studying the lives and works of our public men demonstrate how thoroughly committed to this idea they have been. There is not a joke, nor a mot, nor a scintilla of humor irradiating the Revolutionary statesmen. There is a stilted dignity about their utterances which shows that they were always posing in heroic attitudes. If they lived and moved in family, social, and club life, as we understand it, the gloom of their companionship accounts for the enjoyment which their contemporaries took in the three hours' sermons then common from the pulpit.

As we leave the period of Washington, Hamilton, Jefferson, and the Adamses, we find no humor in the next generation. The only relief from the tedium of argument and exhaustless logic is found in the savage sarcasm of John Randolph, which was neither wit nor humor.

A witty illustration or an apt story will accomplish more than columns of argument. The old-time audience demanded a speech of not less than two hours' duration and expected three. The audience of to-day grows restive after the first hour, and is better pleased with forty minutes. It prefers epigrams to arguments and humor to rhetoric. It is still true, however, that the press presents to readers from a speaker who indulges in humor only the funny part of his effort, and he is in serious danger of receiving no credit for ability in the discussion of great questions, no matter how conspicuous that ability may be. The question is always presented to a frequent speaker whether he shall win the applause of the audience and lose the flattering opinion of the critics, or bore his audience and be complimented by readers for wisdom.

When I look back over sixty-five years on the platform in public speaking, and the success of different methods before audiences, political, literary, business, or a legislative committee, or a legislature itself, and especially when I consider my own pleasure in the efforts, the results and compensations have been far greater than the attainment of any office. For, after all, a man might be dull and a bore to himself and others for a lifetime and have the reputation of being a serious thinker and a solid citizen, and yet never reach the presidency.

It was always a delight to listen to George W. Curtis. He was a finished orator of the classic type, but not of the Demosthenian order. His fine personal appearance,

his well-modulated and far-reaching voice, and his refined manner at once won the favor of his audience. He was a splendid type of the scholar in politics. In preparing a speech he took as much pains as he did with a volume which he was about to publish.

I accepted under great pressure the invitation to deliver the oration at the unveiling of the Bartholdi Statue of Liberty in New York harbor, because the time was so short, only a few days. Mr. Curtis said to me afterwards: "I was very much surprised that you accepted that invitation. I declined it because there was only a month left before the unveiling. I invariably refuse an invitation for an important address unless I can have three months. I take one month to look up authorities and carefully prepare it and then lay it on the shelf for a month. During that period, while you are paying no attention to the matter, your mind is unconsciously at work upon it. When you resume correcting your manuscript you find that in many things about which you thought well you have changed your mind. Leisurely corrections and additions will perfect the address."

As my orations and speeches have always been the by-product of spare evenings and Sundays taken from an intensely active and busy life, if I had followed any of these examples my twelve volumes of speeches would never have seen the light of day.

One of the greatest orators of his generation, and I might say of ours, was Robert G. Ingersoll. I was privileged to meet Colonel Ingersoll many times, and on several occasions to be a speaker on the same platform. The zenith of his fame was reached by his "plumed-knight" speech, nominating James G. Blaine for presi-

dent at the national Republican convention in 1876. It was the testimony of all the delegates that if the vote could have been taken immediately at the conclusion of the speech, Mr. Blaine would have been elected.

Colonel Ingersoll carried off the oratorical honors of that campaign in a series of speeches, covering the whole country. I say a series of speeches; he really had but one, which was the most effective campaign address I ever heard, but which he delivered over and over again, and every time with phenomenal success, a success the like of which I have never known. He delivered it to an immense audience in New York, and swept them off their feet. He repeated this triumph the next day at an open-air meeting in Wall Street, and again the next day at a great gathering in New Jersey. The newspapers printed the speech in full every day after its delivery, as if it had been a new and first utterance of the great orator.

I spoke with him several times when he was one of the speakers after an important dinner. It was a rare treat to hear him. The effort apparently was impromptu, and that added to its effect upon his auditors. That it was thoroughly prepared I found by hearing it several times, always unchanged and always producing the same thrilling effect.

He spoke one night at Cooper Institute at a celebration by the colored people of Mr. Lincoln's proclamation emancipating them from slavery. As usual he was master of the occasion and of his audience. He was then delivering a series of addresses attacking the Bible. His mind was full of that subject, and apparently he could not help assailing the faith of the negroes by asking, if there was a God of justice and mercy, why did he leave

them so long in slavery or permit them ever to be slaves.

To an emotional audience like the one before him it was a most dangerous attack upon faith. I was so fond of the colonel and such an intense admirer of him, I hated to controvert him, but felt it was necessary to do so. The religious fervor which is so intense with the colored people, made it comparatively easy to restore their faith, if it had been weakened, and to bring them to a recognition of the fact that their blessings had all come from God.

Probably the most brilliant speaker of the period immediately preceding the Civil War was Thomas Corwin, of Ohio. We have on the platform in these times no speaker of his type. He had remarkable influence whenever he participated in debate in the House of Representatives. On the stump or hustings he would draw audiences away from Henry Clay or any of the famous speakers of the time. I sometimes wonder if our more experienced and more generally educated audiences of to-day would be swayed by Corwin's methods. He had to the highest degree every element of effective speech. He could put his audience in tears or hilarious laughter, or arouse cheers. He told more stories and told them better than any one else, and indulged freely in what is called Fourth of July exaggeration. He would relieve a logical presentation which was superb and unanswerable by a rhetorical flight of fancy, or by infectious humor. Near the close of his life he spoke near New York, and his great reputation drew to the meeting the representatives of the metropolitan press. He swept the audience off their feet, but the comment of the journals was very critical and unfavorable, both of the speech and the

orator. It was an illustration of what I have often met with: of a speech which was exactly the right thing for the occasion and crowd, but lost its effect in publication. Corwin's humor barred his path to great office, and he saw many ordinary men advance ahead of him.

The most potent factor in the destruction of his enemies and buttressing his own cause was his inimitable wit and humor. In broad statesmanship, solid requirements, and effective eloquence, he stood above the successful mediocrity of his time—the Buchanans and the Polks, the Franklin Pierces and the Winfield Scotts—like a star of the first magnitude above the Milky Way. But in later years he thought the failure to reach the supreme recognition to which he was entitled was due to his humor having created the impression in the minds of his countrymen that he was not a serious person.

Wayne MacVeagh was a very interesting and original speaker. He had a finished and cultured style and a very attractive delivery. He was past master of sarcasm as well as of burning eloquence on patriotic themes. When I was a freshman at Yale he was a senior. I heard him very often at our debating society, the Linnian, where he gave promise of his future success. His father-in-law was Simon Cameron, secretary of war, and he was one of the party which went with Mr. Lincoln to Gettysburg and heard Lincoln's famous address. He told me that it did not produce much impression at the time, and it was long after before the country woke up to its surpassing excellence, and he did not believe the story still current that Mr. Lincoln wrote it on an envelope while on the train to Gettysburg.

MacVeagh became one of the leaders of the American bar and was at one time attorney-general of the United

States. He was successful as a diplomat as minister to Turkey and to Italy.

I heard him on many occasions and spoke with him on many after-dinner platforms. As an after-dinner speaker he was always at his best if some one attacked him, because he had a very quick temper. He got off on me a witticism which had considerable vogue at the time. When I was elected president of the New York Central Railroad, the Yale Association of New York gave me a dinner. It was largely attended by distinguished Yale graduates from different parts of the country. MacVeagh was one of the speakers. In the course of his speech he said: "I was alarmed when I found that our friend Chauncey had been elected president of the most unpopular railroad there is in the country. But rest assured, my friends, that he will change the situation, and before his administration is closed make it the most popular of our railroad corporations, because he will bring the stock within the reach of the poorest citizen of the land." The stock was then at the lowest point in its history on account of its life-and-death fight with the West Shore Railroad, and so, of course, the reverse of my friend MacVeagh's prediction was not difficult.

One of the greatest and most remarkable orators of his time was Henry Ward Beecher. I never met his equal in readiness and versatility. His vitality was infectious. He was a big, healthy, vigorous man with the physique of an athlete, and his intellectual fire and vigor corresponded with his physical strength. There seemed to be no limit to his ideas, anecdotes, illustrations, and incidents. He had a fervid imagination and wonderful power of assimilation and reproduction and the most observant of eyes. He was drawing material constantly

from the forests, the flowers, the gardens, and the domestic animals in the fields and in the house, and using them most effectively in his sermons and speeches. An intimate friend of mine, a country doctor and great admirer of Mr. Beecher, became a subscriber to the weekly paper in which was printed his Sunday sermon, and carefully guarded a file of them which he made. He not only wanted to read the sermons of his favorite preacher, but he believed him to have infinite variety, and was constantly examining the efforts of his idol to see if he could not find an illustration, anecdote, or idea repeated.

Mr. Beecher seemed to be teeming with ideas all the time, almost to the point of bursting. While most orators are relying upon their libraries and their commonplace book, and their friends for material, he apparently found more in every twenty-four hours than he could use. His sermons every Sunday appeared in the press. He lectured frequently; several times a week he delivered after-dinner speeches, and during such intervals as he had he made popular addresses, spoke at meetings on municipal and general reform, and on patriotic occasions. One of the most effective, and for the time one of the most eloquent addresses I ever heard in my life was the one he delivered at the funeral of Horace Greeley.

When the sentiment in England in favor of the South in our Civil War seemed to be growing to a point where Great Britain might recognize the Southern Confederacy, Mr. Lincoln asked Mr. Beecher to go over and present the Union side. Those speeches of Mr. Beecher, a stranger in a strange country, to hostile audiences, were probably as extraordinary an evidence of oratorical power as was ever known. He captured audiences, he overcame the hostility of persistent disturbers of the

meetings, and with his ready wit overwhelmed the heckler.

At one of the great meetings, when the sentiment was rapidly changing from hostility to favor, a man arose and asked Mr. Beecher: "If you people of the North are so strong and your cause is so good, why after all these years of fighting have you not licked the South?" Mr. Beecher's instant and most audacious reply was: "If the Southerners were Englishmen we would have licked them." With the English love of fair play, the retort was accepted with cheers.

While other orators were preparing, he seemed to be seeking occasions for talking and drawing from an overflowing reservoir. Frequently he would spend an hour with a crowd of admirers, just talking to them on any subject which might be uppermost in his mind. I knew an authoress who was always present at these gatherings, who took copious notes and reproduced them with great fidelity. There were circles of Beecher worshippers in many towns and in many States. This authoress used to come to New Haven in my senior year at Yale, and in a circle of Beecher admirers, which I was permitted to attend, would reproduce these informal talks of Mr. Beecher. He was the most ready orator, and with his almost feminine sympathies and emotional nature would add immensely to his formal speech by ideas which would occur to him in the heat of delivery, or with comment upon conversations which he had heard on the way to church or meeting.

I happened to be on a train with him on an all-day journey, and he never ceased talking in the most interesting and effective way, and pouring out from his rich and inexhaustible stores with remarkable lucidity and

eloquence his views upon current topics, as well as upon recent literature, art, and world movements.

Beecher's famous trial on charges made by Theodore Tilton against him on relations with Tilton's wife engrossed the attention of the world. The charge was a shock to the religious and moral sense of countless millions of people. When the trial was over the public was practically convinced of Mr. Beecher's innocence. The jury, however, disagreed, a few holding out against him. The case was never again brought to trial. The trial lasted six months.

One evening when I was in Peekskill I went from our old homestead into the crowded part of the village, to be with old friends. I saw there a large crowd and also the village military and fire companies. I asked what it was all about, and was informed that the whole town was going out to Mr. Beecher's house, which was about one and one-half miles from the village, to join in a demonstration for his vindication. I took step with one of the companies to which I belonged when I was a boy, and marched out with the crowd.

The president of the village and leading citizens, one after another, mounted the platform, which was the piazza of Mr. Beecher's house, and expressed their confidence in him and the confidence of his neighbors, the villagers. Then Mr. Beecher said to me: "You were born in this town and are known all over the country. If you feel like saying something it would travel far." Of course, I was very glad of the opportunity because I believed in him. In the course of my speech I told a story which had wonderful vogue. I said: "Mr. Lincoln told me of an experience he had in his early practice when he was defending a man who had been accused of

a vicious assault upon a neighbor. There were no witnesses, and under the laws of evidence at that time the accused could not testify. So the complainant had it all his own way. The only opportunity Mr. Lincoln had to help his client was to break down the accuser on a cross-examination. Mr. Lincoln said he saw that the accuser was a boastful and bumptious man, and so asked him: 'How much ground was there over which you and my client fought?' The witness answered proudly: 'Six acres, Mr. Lincoln.' 'Well,' said Lincoln, 'don't you think this was a mighty small crop of fight to raise on such a large farm?' Mr. Lincoln said the judge laughed and so did the district attorney and the jury, and his client was acquitted."

The appositeness was in the six acres of ground of the Lincoln trial and of the six months of the Beecher trial. As this was a new story of Lincoln's, which had never been printed, and as it related to the trial of the most famous of preachers on the worst of charges that could be made against a preacher, the story was printed all over the country, and from friends and consular agents who sent me clippings I found was copied in almost every country in the world.

Mr. Beecher was one of the few preachers who was both most effective in the pulpit and, if possible, more eloquent upon the platform. When there was a moral issue involved he would address political audiences. In one campaign his speeches were more widely printed than those of any of the senators, members of the House, or governors who spoke. I remember one illustration of his about his dog, Noble, barking for hours at the hole from which a squirrel had departed, and was enjoying the music sitting calmly in the crotch of a tree. The

illustration caught the fancy of the country and turned the laugh upon the opposition.

Hugh J. Hastings, at one time editor and proprietor of the *Albany Knickerbocker*, and subsequently of the *New York Commercial Advertiser*, was full of valuable reminiscences. He began life in journalism as a very young man under Thurlow Weed. This association made him a Whig. Very few Irishmen belonged to that party. Hastings was a born politician and organized an Irish Whig club. He told me that he worshipped Daniel Webster.

Webster, he said, once stopped over at Albany while passing through the State, and became a guest of one of Albany's leading citizens and its most generous host and entertainer. The gentleman gave in Webster's honor a large dinner at which were present all the notables of the capital.

Hastings organized a procession which grew to enormous proportions by the time it reached the residence where Mr. Webster was dining. When the guests came out, it was evident, according to Hastings, that they had been dining too well. This was not singular, because then no dinner was perfect in Albany unless there were thirteen courses and thirteen different kinds of wine, and the whole closed up with the famous Regency rum, which had been secured by Albany bon-vivants before the insurrection in the West Indies had stopped its manufacture. There was a kick in it which, if there had been no other brands preceding, was fatal to all except the strongest heads. I tested its powers myself when I was in office in Albany fifty-odd years ago.

Hastings said that when Webster began his speech he was as near his idol as possible and stood right in front

of him. When the statesman made a gesture to emphasize a sentence he lost his hold on the balustrade and pitched forward. The young Irishman was equal to the occasion, and interposed an athletic arm, which prevented Mr. Webster from falling, and held him until he had finished his address. The fact that he could continue his address under such conditions increased, if that was possible, the admiration of young Hastings. Webster was one of the few men who, when drunk all over, had a sober head.

The speech was very effective, not only to that audience, but, as reported, all over the country. Hastings was sent for and escorted to the dining-room, where the guests had reassembled. Webster grasped him by the hand, and in his most Jovian way exclaimed: "Young man, you prevented me from disgracing myself. I thank you and will never forget you." Hastings reported his feelings as such that if he had died that night he had received of life all it had which was worth living for.

I do not know what were Mr. Webster's drinking habits, but the popular reports in regard to them had a very injurious effect upon young men and especially young lawyers. It was the universal conversation that Webster was unable to do his best work and have his mind at its highest efficiency except under the influence of copious drafts of brandy. Many a young lawyer believing this drank to excess, not because he loved alcohol, but because he believed its use might make him a second Webster.

Having lived in that atmosphere, I tried the experiment myself. Happily for me, I discovered how utterly false it is. I tried the hard liquors, brandy, whiskey, and gin, and then the wines. I found that all had a de-

pressing and deadening effect upon the mind, but that there was a certain exhilaration, though not a healthy one, in champagne. I also discovered, and found the same was true with every one else, that the mind works best and produces the more satisfactory results without any alcohol whatever.

I doubt if any speaker, unless he has become dependent upon stimulants, can use them before making an important effort without having his mental machinery more or less clogged. I know it is reported that Addison, whose English has been the model of succeeding generations, in writing his best essays wore the carpet out while walking between sentences from the sideboard where the brandy was to his writing-table. But they had heroic constitutions and iron-clad digestive apparatus in those times, which have not been transmitted to their descendants.

I heard another story of Webster from Horace F. Clarke, a famous lawyer of New York, and a great friend of his. Mr. Clarke said that he had a case involving very large interests before the chancellor. He discovered that Mr. Webster was at the Astor House, and called upon him. Mr. Webster told him that his public and professional engagements were overwhelming, and that it was impossible for him to take up anything new. Clarke put a thousand dollars on the table and pleaded with Mr. Webster to accept a retainer. Clarke said that Webster looked longingly at the money, saying: "Young man, you cannot imagine, and I have no words which can express how much I need that money, but it is impossible. However, let me see your brief." Webster read it over and then said to Clarke: "You will not win on that brief, but if you will incorporate this, I think your case

is all right." Clarke said that when he presented the brief and made his argument before the chancellor, the chancellor decided in his favor, wholly on the suggestion made by Mr. Webster. An eminent lawyer told me that studying Mr. Webster's arguments before the Supreme Court and the decisions made in those cases, he discovered very often that the opinion of the court followed the reasoning of this marvellous advocate.

Henry J. Raymond told me the following story of Mr. William H. Seward. He said that one morning a messenger came to his office (Raymond at that time was editor of the *New York Times*) and said that Mr. Seward was at the Astor House and wanted to see me. When I arrived Mr. Seward said: "I am on my way to my home at Auburn, where I am expected to deliver a speech for the whole country in explanation and defense of our administration. [Johnson was president.] When I am ready I will wire you, and then send me one of your best reporters." About two weeks afterwards Mr. Raymond received this cryptic telegram from Mr. Seward: "Send me the man of whom I spoke."

When the reporter returned he said to Mr. Raymond: "When I arrived at Auburn I expected that a great meeting had been advertised, but there were no handbills, notices, or anything in the local papers, so I went up to Mr. Seward's house. He said to me: 'I am very glad to see you. Have you your pencil and note-book? if so, we will make a speech.' After the dictation Mr. Seward said: 'Please write that out on every third line, so as to leave room for corrections, and bring it back to me in the morning.' When I gave the copy to Mr. Seward, he took it and kept it during the day, and when I returned in the evening the vacant space had been

filled with corrections and new matter. Mr. Seward said to me: 'Now make me a clean copy as corrected.' When I returned with the corrected copy he remarked: 'I think you and I made a very poor speech. Let us try it again.' The same process was repeated a second time, and this corrected copy of the speech was delivered in part to a few friends who were called into Mr. Seward's library for the occasion. The next morning these headlines appeared in all the leading papers in the country: "GREAT SPEECH ON BEHALF OF THE ADMINISTRATION BY THE SECRETARY OF STATE AT A BIG MASS MEETING AT AUBURN, N. Y."

In the career of a statesman a phrase will often make or unmake his future. In the height of the slavery excitement and while the enforcement of the fugitive-slave law was arousing the greatest indignation in the North, Mr. Seward delivered a speech at Rochester, N. Y., which stirred the country. In that speech, while paying due deference to the Constitution and the laws, he very solemnly declared that "there is a higher law." Mr. Seward sometimes called attention to his position by an oracular utterance which he left the people to interpret. This phrase, "the higher law," became of first-class importance, both in Congress, in the press, and on the platform. On the one side, it was denounced as treason and anarchy. On the other side, it was the call of conscience and of the New Testament's teaching of the rights of man. It was one of the causes of his defeat for the presidency.

Senator Henry Wilson, of Massachusetts, afterwards vice-president, was in great demand. He was clear in his historical statements and emphatic in his expression of views. If he had any apprehension of humor he never

showed it in his speeches. His career had been very picturesque—from unskilled laborer to the Senate and the vice-presidency. The impression he gave was of an example of American opportunity, and he was more impressive and influential by his personality and history than by what he said.

One of the most picturesque and popular stump speakers was Daniel S. Dickinson. He had been a United States senator and party leader, and was a national figure. His venerable appearance gave force to his oratory. He seemed to be of great age, but was remarkably vigorous. His speeches were made up of epigrams which were quotable and effective. He jumped rapidly from argument to anecdote and was vitriolic in attack.

I had an interesting experience with Mr. Dickinson when running for secretary of state in 1863. The drawing card for that year, and the most sought-after and popular for campaign speaking, was Governor Andrew, of Massachusetts. He had a series of appointments in New York State, but on account of some emergency cancelled them all. The national and State committees selected me to fill his appointments. The most unsatisfactory and disagreeable job in the world is to meet the appointments of a popular speaker. The expectations of the audience have been aroused to a degree by propaganda advertising the genius and accomplishments of the expected speaker. The substitute cannot meet those expectations, and an angry crowd holds him responsible for their disappointment.

When I left the train at the station I was in the midst of a mass-meeting of several counties at Deposit, N. Y. A large committee, profusely decorated with campaign

badges, were on the platform to welcome the distinguished war governor of Massachusetts. I did not meet physically their expectations of an impressive statesman of dignified presence, wearing a Prince Albert suit and a top hat. I had been long campaigning, my soft hat was disreputable, and I had added a large shawl to my campaigning equipment. Besides that, I was only twenty-eight and looked much younger. The committee expected at least sixty. Finally the chairman rushed up to me and said: "You were on the train. Did you see Governor Andrew, of Massachusetts?" I answered him: "Governor Andrew is not coming; he has cancelled all his engagements, and I have been sent to take his place." The chairman gasped and then exclaimed: "My God!" He very excitedly summoned his fellow members of the committee and said to them: "Gentlemen, Governor Andrew is not coming, but the State committee has sent *this*," pointing to me. I was the party candidate as secretary of state, and at the head of the ticket, but nobody asked me who I was, nor did I tell them. I was left severely alone.

Some time after, the chairman of the committee came to me and said: "Young fellow, we won't be hard on you, but the State committee has done this once before. We were promised a very popular speaker well known among us, but in his place they sent the damnedest fool who ever stood before an audience. However, we have sent to Binghamton for Daniel S. Dickinson, and he will be here in a short time and save our big mass-meeting."

Mr. Dickinson came and delivered a typical speech; every sentence was a bombshell and its explosion very effective. He had the privilege of age, and told a story which I would not have dared to tell, the audience being

half women. He said: "Those constitutional lawyers, who are proclaiming that all Mr. Lincoln's acts are unconstitutional, don't know any law. They remind me of a doctor we have up in Binghamton, who has a large practice because of his fine appearance, his big words, and gold-headed cane. He was called to see a young lad who was sitting on his grandmother's lap. After looking at the boy's tongue and feeling his pulse, he rested his head in deep thought for a while on his gold-headed cane and then said: 'Madam, this boy has such difficulties with the epiglottis and such inflamed larynx that we will have to apply phlebotomy.' The old lady clasped the boy frantically to her bosom and cried: 'For heaven's sake, doctor, what on earth can ail the boy that you are going to put all that on his bottom?'"

Mr. Dickinson introduced me as the head of the State ticket. My speech proved a success, and the chairman paid me the handsome compliment of saying: "We are glad they sent you instead of Governor Andrew."

One of the most effective of our campaign speakers was General Bruce, of Syracuse, N. Y. The general had practically only one speech, which was full of picturesque illustrations, striking anecdotes, and highly wrought-up periods of patriotic exaltation. He delivered this speech, with necessary variations, through many campaigns. I was with the general, who was Canal commissioner when I was secretary of state, on our official tour on the Canal.

One night the general said to me: "Mr. Blank, who has a great reputation, is speaking in a neighboring town, and I am going to hear him." He came back enraged and unhappy. In telling me about it, he said: "That infernal thief delivered my speech word for word, and better than I can do it myself. I am too old to get up

another one, and, as I love to speak, I am very unhappy."

This illustrated one of the accidents to which a campaign speaker is liable. The man who stole the general's speech afterwards played the same trick on me. He came into our State from New England with a great reputation. He was a very fine elocutionist, of excellent presence and manner, but utterly incapable of original thought. He could not prepare a speech of any kind. However, he had a phenomenal memory. He could listen to a speech made by another and repeat it perfectly. His attractive appearance, good voice, and fine elocution made the speech a great success. Several orators told me that when they found their efforts a failure they asked for the cause, and discovered that this man had delivered their speeches a few nights before, and the audience, of course, thought the last speaker was a fraud and a thief.

General Bruce told me a good campaign story of Senator James W. Nye, of Nevada. Nye was a prominent lawyer of western New York, and the most eloquent and witty member of the bar of that section, and also the most popular campaign speaker. He moved to Nevada and so impressed the people of that young State that he was elected United States senator. In the Senate he became a notable figure.

Nye and General Bruce were sent by the national committee to canvass New England. Nye had become senatorial in his oratory, with much more dignity and elevation of style than before. He began his first speech at Bridgeport, Conn., in this way: "Fellow citizens, I have come three thousand miles from my mountain home, three thousand feet above the level of the sea, to discuss with you these vital questions for the safety of

our republic." The next night, at New Haven, he said: "I have come from my mountain home, five thousand feet above the level of the sea, to discuss with you these vital questions of the safety of our republic." Bruce interrupted him, saying: "Why, senator, it was only three thousand feet last night." Nye turned savagely on Bruce: "Bruce, you go to the devil!" Resuming with the audience, he remarked very impressively: "As I was saying, fellow citizens, I have come from my mountain home, ten thousand feet above the level of the sea, to, etc."

A story which illustrates and enforces the argument helps a political speech, and it is often the only part of the speech which is remembered. I have often heard people say to me: "I heard you speak thirty, forty, or fifty years ago, and this is the story you told." Sometimes, however, the story may prove a boomerang in the most unexpected way.

For many years, when I spoke in northern New York I was always met at the Syracuse station by a superintendent of the Lackawanna Railroad with a special train filled with friends. He carried me up to my destination and brought me back in the morning. It was his great day of the year, and during the trip he was full of reminiscences, and mainly of the confidences reposed in him by the president of the road, my old and valued friend, Samuel Sloan.

One fall he failed to appear, and there was no special train to meet me. I was told by friends that the reason was his wife had died and he was in mourning. The morning after the meeting I started to call upon him, but was informed that he was very hostile and would not see me. I was not going to lose an old friend like that

and went up to his office. As soon as I entered, he said: "Go away, I don't want to see you again." I appealed to him, saying: "I cannot lose so good a friend as you. If there is anything I have done or said, I will do everything in my power to make it right." He turned on me sharply and with great emotion told this story: "My wife and I lived in loving harmony for over thirty years, and when she died recently I was heartbroken. The whole town was sympathetic; most of the business houses closed during the hour of the funeral. I had arranged to have ministers whom my wife admired, and with them, selected passages of scriptures and hymns to which she was devoted. A new minister in town was invited by the others to participate, and without my knowledge. I looked over the congregation, all Mary's friends. I listened to the services, which Mary herself would have chosen, and said to Mary's spirit, which I knew to be hovering about: 'We are all paying you a loving tribute.' Then the new minister had for his part the announcement and reading of a hymn. At the last Republican convention at Saratoga, in order to illustrate the condition of the Democratic party, you told a story about a boy walking among the children's graves in the old cemetery at Peekskill, eating green apples and whistling 'Nearer, my God, to Thee.' The new minister gave that hymn, 'Nearer, my God, to Thee.' Your story came up in my mind, and I burst out laughing. I disgraced myself, insulted the memory of Mary, and I never want to see you again."

XXI

NATIONAL REPUBLICAN CONVENTIONS

When the Republican convention met in 1912 I was again a delegate. In my fifty-six years of national conventions I never had such an intensely disagreeable experience. I felt it my duty to support President Taft for renomination. I thought he had earned it by his excellent administration. I had many ties with him, beginning with our associations as graduates of Yale, and held for him a most cordial regard. I was swayed by my old and unabated love for Roosevelt. In that compromise and harmony were impossible. I saw that, with the control of the organization and of the convention on the side of Mr. Taft, and with the wild support for Roosevelt of the delegates from the States which could be relied upon to give Republican majorities, the nomination of either would be sure defeat.

I was again a delegate to the Republican convention of 1916. The party was united. Progressives and conservatives were acting together, and the convention was in the happiest of moods. It was generally understood that Justice Hughes would be nominated if he could be induced to resign from the Supreme Court and accept. The presiding officer of the convention was Senator Warren G. Harding. He made a very acceptable keynote speech. His fine appearance, his fairness, justice, and good temper as presiding officer captured the convention. There was a universal sentiment that if Hughes declined the party could do no better than to

nominate Senator Harding. It was this impression among the delegates, many of whom were also members of the convention of 1920, which led to the selection as the convention's candidate for president of Warren G. Harding.

My good mother was a Presbyterian and a good Calvinist. She believed and impressed upon me the certainty of special Providence. It is hard for a Republican to think that the election of Woodrow Wilson was a special Providence, but if our candidate, Mr. Hughes, had been elected he would have had a hostile Democratic majority in Congress.

When the United States went into the war, as it must have done, the president would have been handicapped by this pacifist Congress. The draft would have been refused, without which our army of four millions could not have been raised. The autocratic measures necessary for the conduct of the war would have been denied. With the conflict between the executive and Congress, our position would have been impossible and indefensible.

I had a personal experience in the convention. Chairman Harding sent one of the secretaries to me with a message that there was an interval of about an hour when the convention would have nothing to do. It was during such a period the crank had his opportunity and the situation was dangerous, and he wished me to come to the platform and fill as much of that hour as possible. I refused on the ground that I was wholly unprepared, and it would be madness to attempt to speak to fourteen thousand people in the hall and a hundred million outside.

A few minutes afterwards Governor Whitman, chairman of the New York delegation, came to me and said:

"You must be drafted. The chairman will create some business to give you fifteen minutes to think up your speech." I spurred my gray matter as never before, and was then introduced and spoke for forty-five minutes. I was past eighty-two. The speech was a success, but when I returned to my seat I remembered what General Garfield had so earnestly said to me: "You are the only man of national reputation who will speak without preparation. Unless you peremptorily and decisively stop yielding you will some day make such a failure as to destroy the reputation of a lifetime."

In a letter President Harding has this to say in reference to the occasion: "Just about a year ago (1916) it was my privilege as chairman of the Republican convention at Chicago to call upon you for an address. There was a hiatus which called for a speech, and you so wonderfully met the difficult requirements that I sat in fascinated admiration and have been ready ever since to pay you unstinted tribute. You were ever eloquent in your more active years, but I count you the old man eloquent and incomparable in your eighties. May many more helpful and happy years be yours."

I was again a delegate to the convention in June, 1920. The Republicans had been for eight years out of office during Mr. Wilson's two terms. The delegates were exceedingly anxious to make no mistake and have no friction in the campaign.

The two leading candidates, General Wood and Governor Lowden, had nearly equal strength and were supported by most enthusiastic admirers and advocates. As the balloting continued the rivalry and feeling grew between their friends. It became necessary to harmonize the situation, and it was generally believed that

this could be best done by selecting Senator Warren G. Harding.

Very few conventions have a dramatic surprise, but the nomination of Governor Coolidge, of Massachusetts, for vice-president came about in a very picturesque way. He had been named for president among the others, and the speech in his behalf by Speaker Frederick H. Gillett was an excellent one. Somehow the convention did not seem to grasp all that the governor stood for and how strong he was with each delegate. When the nominations for vice-president were called for, Senator Medill McCormick presented Senator Lenroot, of Wisconsin, in an excellent speech. There were also very good addresses on behalf of the Governor of Kansas and others.

When the balloting was about to start, a delegate from Oregon who was in the rear of the hall arose and said: "Mr. Chairman." The chairman said: "The gentleman from Oregon." The Oregon delegate, in a far-reaching voice, shouted: "Mr. Chairman, I nominate for vice-president Calvin Coolidge, a one-hundred-per-cent American." The convention went off its feet with a whoop and Coolidge was nominated hands down.

I again had a personal experience. The committee on resolutions, not being prepared to report, there was that interval of no business which is the despair of presiding officers of conventions. The crowd suddenly began calling for me. While, of course, I had thought much on the subject, I had not expected to be called upon and had no prepared speech. Happily, fifteen thousand faces and fifteen thousand voices giving uproarious welcome both steadied and inspired me. Though I was past eighty-six years of age, my voice was in as good condition as at forty, and was practically the only one

which did fill that vast auditorium. The press of the country featured the effort next day in a way which was most gratifying.

Among the thousands who greeted me on the streets and in the hotel lobbies with congratulations and efforts to say something agreeable and complimentary, I selected one compliment as unique. He was an enthusiast. "Chauncey Depew," he said, "I have for over twenty years wanted to shake hands with you. Your speech was a wonder. I was half a mile off, way up under the roof, and heard every word of it, and it was the only one I was able to hear. That you should do this in your eighty-seventh year is a miracle. But then my father was a miracle. On his eighty-fifth birthday he was in just as good shape as you are to-day, and a week afterwards he was dead."

XXII

JOURNALISTS AND FINANCIERS

In reminiscences of my journalistic friends I do not include many of the most valued who are still living. Of those who have passed away one of the most faithful and devoted was Edward H. Butler, editor and proprietor of the *Buffalo Evening News*.

Mr. Butler began at the bottom as a newspaper man, and very early and rapidly climbed to the top. He secured control of the *Evening News* and soon made it one of the most, if not the most, widely circulated, influential, and prosperous papers of western New York. Personally and through his paper he was for many years my devoted friend. To those he loved he had an unbounded fidelity and generosity. He possessed keen insight and kept thoroughly abreast of public affairs, and was a journalist of high order.

It was my privilege to know Charles A. Dana very well. I first met him when he was on the *New York Tribune* and closely allied with Horace Greeley. He made the *New York Sun* one of the brightest, most original, and most quoted newspapers in the United States. His high culture, wonderful command of English, and refined taste gave to the *Sun* a high literary position, and at the same time his audacity and criticism made him a terror to those with whom he differed, and his editorials the delight of a reader.

Personally Mr. Dana was one of the most attractive and charming of men. As assistant secretary of war

during Lincoln's administration he came in intimate contact with all the public men of that period, and as a journalist his study was invaded and he received most graciously men and women famous in every department of intellectual activity. His reminiscences were wonderful and his characterizations remarkable. He might have published an autobiography of rare value and interest.

When the elder James Gordon Bennett died the newspaper world recognized the loss of one of the most remarkable and successful of journalists and publishers. His son had won reputation in the field of sport, but his contemporaries doubted his ability to maintain, much less increase, the sphere of the *New York Herald*. But young Bennett soon displayed rare originality and enterprise. He made his newspaper one of national and international importance. By bringing out an edition in Paris he conferred a boon upon Americans abroad. For many years there was little news from the United States in foreign newspapers, but Americans crazy for news from home found it in the Paris edition of the *New York Herald*.

Mr. Bennett was a good friend of mine for half a century. He was delightful company, with his grasp of world affairs and picturesque presentation of them. A President of the United States who wished to change the hostile attitude of the *Herald* towards his administration and himself asked me to interview Mr. Bennett. The editor was courteous, frank, but implacable. But some time afterwards the *Herald* became a cordial supporter of the president. The interview and its subsequent result displayed a characteristic of Bennett. He would not recognize that his judgment or action could be influ-

enced, but his mind was so open and fair that when convinced that he was wrong he would in his own way and at his own time do the right thing.

Mr. Bennett did me once an essential service. It was at the time when I was a candidate for re-election to the United States Senate. I cabled him in Paris and asked that he would look into the situation through his confidential friends, reporters, and employees, and if he found the situation warranted his taking a position to do so. Of course the *Herald* was an independent and not a party journal and rarely took sides. But not long afterwards, editorially and reportorially, the emphatic endorsement of the *Herald* came, and positive prediction of success, and were of great help. He was one of my groomsmen at my wedding in 1901.

Among the thousands of stories which appear and disappear like butterflies, it is a curious question what vogue and circulation one can have over others. By an accident I broke one of the tendons of my heel and was laid up in my house for some time, unable to walk. The surgeon fixed the bandage in place by a liquid cement, which soon solidified like glass.

Julian Ralph, a brilliant young newspaper reporter, wrote a long story in the *New York Sun* about a wonderful glass leg, which had been substituted for the natural one and did better work. The story had universal publication not only in the United States but abroad, and interested scientists and surgeons. My mail grew to enormous proportions with letters from eager inquirers wanting to know all the particulars. The multitude of unfortunates who had lost their legs or were dissatisfied with artificial ones wrote to me to find out where these wonderful glass legs could be obtained.

The glass-leg story nearly killed me, but it gave Ralph such a reputation that he was advanced to positions both at home and abroad, where his literary genius and imagination won him many honors, but he never repeated his success with my glass leg.

I suppose, having been more than half a century in close contact with matters of interest to the public, or officially in positions where I was a party to corporate activities or movements which might affect the market, I have been more interviewed than any one living and seen more reporters. No reporter has ever abused the confidence I reposed in him. He always appreciated what I told him, even to the verge of indiscretion, and knew what was proper for him to reveal and what was not for publication. In the critical situations which often occurred in railway controversies, this cordial relationship with reporters was of great value in getting our side before the public.

One reporter especially, a space writer, managed for a long time to get from me one-half to a column nearly every day, sometimes appearing as interviews and at other times under the general phrase: "It has been learned from a reliable source."

I recall a personal incident out of the ordinary. I was awakened one stormy winter night by a reporter who was well known to me, a young man of unusual promise. I met him in dressing gown and slippers in my library. There he told me that his wife was ill, and to save her life the doctor informed him that he must send her West to a sanitarium.

"I have no money," he continued, "and will not borrow nor beg, but you must give me a story I can sell."

We discussed various matters which a paper would

like to have, and finally I gave him a veiled but still intelligible story, which we both knew the papers were anxious to get. He told me afterwards that he sold the interview for enough to meet his present needs and his wife's journey. Some time after he entered Wall Street and made a success.

I have known well nearly all the phenomenally successful business men of my time. It is a popular idea that luck or chance had much to do with their careers. This is a mistake. All of them had vision not possessed by their fellows. They could see opportunities where others took the opposite view, and they had the courage of their convictions. They had standards of their own which they lived up to, and these standards differed widely from the ethical ideas of the majority.

Russell Sage, who died in the eighties, had to his credit an estate which amounted to a million dollars for every year of his life. He was not always a money-maker, but he was educated in the art as a banker, was diverted into politics, elected to Congress, and became a very useful member of that body. When politics changed and he was defeated, he came to New York and speedily found his place among the survival of the fittest. Mr. Sage could see before others when bad times would be followed by better ones and securities rise in value, and he also saw before others when disasters would follow prosperity. Relying upon his own judgment, he became a winner, whether the market went up or down.

I met Mr. Sage frequently and enjoyed his quick and keen appreciation of men and things. Of course, I knew that he cultivated me because he thought that from my

official position he might possibly gain information which he could use in the market. I never received any points from him, or acted upon any of his suggestions. I think the reason why I am in excellent health and vigor in my eighty-eighth year is largely due to the fact that the points or suggestions of great financiers never interested me. I have known thousands who were ruined by them. The financier who gives advice may mean well as to the securities which he confidentially tells about, but an unexpected financial storm may make all prophecies worthless, except for those who have capital to tide it over.

One of the most certain opportunities for fortune was to buy Erie after Commodore Vanderbilt had secured every share and the shorts were selling wildly what they did not have and could not get. An issue of fraudulent and unauthorized stock suddenly flooded the market and thousands were ruined.

As Mr. Sage's wealth increased, the generous and public-spirited impulses which were his underlying characteristics, became entirely obscured by the craze for accumulation. His wife, to whom he was devotedly attached, was, fortunately for him, one of the most generous, philanthropic, and open-minded of women. She was most loyal to the Emma Willard School at Troy, N. Y., from which she graduated. Mrs. Sage wrote me a note at one time, saying: "Mr. Sage has promised to build and give to the Willard School a building which will cost one hundred and fifty thousand dollars, and he wants you to deliver the address at the laying of the corner-stone." I wrote back that I was so overwhelmed with business that it was impossible for me to accept. She replied: "Russell vows he will not give a dollar unless you promise to deliver the address. This is the first

effort in his life at liberal giving. Don't you think he ought to be encouraged?" I immediately accepted.

Mrs. Sage was a *Mayflower* descendant. At one of the anniversaries of the society she invited me to be her guest and to make a speech. She had quite a large company at her table. When the champagne corks began to explode all around us, she asked what I thought she ought to do. I answered: "As the rest are doing." Mr. Sage vigorously protested that it was a useless and wasteful expense. However, Mrs. Sage gave the order, and Mr. Sage and two objecting gentlemen at the table were the most liberal participants of her hospitality. The inspiration of the phizz brought Sage to his feet, though not on the programme. He talked until the committee of arrangements succeeded in persuading him that the company was entirely satisfied.

Jay Gould told me a story of Sage. The market had gone against him and left him under great obligations. The shock sent Sage to bed, and he declared that he was ruined. Mr. Gould and Mr. Cyrus W. Field became alarmed for his life and went to see him. They found him broken-hearted and in a serious condition. Gould said to him: "Sage, I will assume all your obligations and give you so many millions of dollars if you will transfer to me the cash you have in banks, trust, and safe-deposit companies, and you keep all your securities, and all your real estate." The proposition proved to be the shock necessary to counteract Sage's panic and save his life. He shouted, "I won't do it!" jumped out of bed, met all his obligations, and turned defeat into a victory.

Sage could not personally give away his fortune, so he left it all, without reservations, to his wife. The world

is better and happier by her wise distribution of his accumulations.

One of Mr. Sage's lawyers was an intimate friend of mine, and he told me this story. Sage had been persuaded by his fellow directors in the Western Union Telegraph Company to make a will. As he was attorney for the company, Sage came to him to draw it.

The lawyer began to write: "I, Russell Sage, of the City of New York, being of sound mind" . . . (Sage interrupted him in his quick way by saying, "Nobody will dispute that") "do publish and devise this to be my last will and testament as follows: First, I direct that all my just debts will be paid." . . . ("That's easy," said Sage, "because I haven't any.") "Also my funeral expenses and testamentary expenses." ("Make the funeral simple. I dislike display and ostentation, and especially at funerals," said Sage.) "Next," said the lawyer, "I give, devise, and bequeath" . . . (Sage shouted: "I won't do it! I won't do it!" and left the office.)

Nothing is so absorbing as the life of Wall Street. It is more abused, misunderstood, and envied than any place in the country. Wall Street means that the sharpest wits from every State in the Union, and many from South America and Europe, are competing with each other for the great prizes of development, exploitation, and speculation.

I remember a Wall Street man who was of wide reading and high culture, and yet devoted to both the operation and romance of the Street. He rushed into my room one night at Lucerne in Switzerland and said: "I have just arrived from Greece and have been out of touch with everything for six weeks. I am starving for news of the market."

I enlightened him as well as I could, and then he remarked: "Do you know, while in Athens our little party stood on the Acropolis admiring the Parthenon, and one enthusiastic Grecian exclaimed: 'There is the wonder of the world. For three thousand years its perfection has baffled and taught the genius of every generation. It can be copied, but never yet has been equalled. Surely, notwithstanding your love of New York and devotion to the ticker, you must admire the Parthenon.' I answered him, if I could be transported at this minute to Fifth Avenue and Broadway and could look up at the Flatiron Building, I would give the money to rebuild that old ruin."

While conditions in the United States because of the World War are serious, they are so much better than in the years following the close of the Civil War, that we who have had the double experience can be greatly encouraged. Then one-half of our country was devastated, its industries destroyed or paralyzed; now we are united and stronger in every way. Then we had a paper currency and dangerous inflation, now we are on a gold standard and with an excellent banking and credit system. The development of our resources and wonderful inventions and discoveries since the Civil War place us in the foremost position to enter upon world commerce when all other nations have come as they must to co-operation and co-ordination upon lines for the preservation of peace and the promotion of international prosperity.

Many incidents personal to me occur which illustrate conditions following the close of the war between the States. I knew very rich men who became paupers, and strong institutions and corporations which went into

bankruptcy. I was in the Union Trust Company of New York when our financial circles were stunned by the closing of its doors following the closing of the New York Stock Exchange.

One of my clients was Mr. Augustus Schell, one of the ablest and most successful of financiers and public-spirited citizens. The panic had ruined him. As we left the Union Trust Company he had his hat over his eyes, and his head was buried in the upturned collar of his coat. When opposite Trinity Church he said: "Mr. Depew, after being a rich man for over forty years, it is hard to walk under a poor man's hat." When we reached the Astor House a complete reaction had occurred. His collar was turned down, his head came out confident and aggressive, his hat had shifted to the back of his head and on a rakish angle. The hopeful citizen fairly shouted: "Mr. Depew, the world has always gone around, it always will go around." He managed with the aid of Commodore Vanderbilt to save his assets from sacrifice. In a few years they recovered normal value, and Mr. Schell with his fortune intact found "the world had gone around" and he was on top again.

I have often felt the inspiration of Mr. Schell's confidence and hope and have frequently lifted others out of the depths of despair by narrating the story and emphasizing the motto "The world always has gone around, the world always will go around."

Illustrating the wild speculative spirit of one financial period, and the eagerness with which speculators grasped at what they thought points, the following is one of my many experiences.

Running down Wall Street one day because I was late for an important meeting, a well-known speculator

stopped me and shouted: "What about Erie?" I threw him off impatiently, saying, "Damn Erie!" and rushed on. I knew nothing about Erie speculatively and was irritated at being still further delayed for my meeting.

Sometime afterwards I received a note from him in which he said: "I never can be grateful enough for the point you gave me on Erie. I made on it the biggest kill of my life."

I have often had quoted to me that sentence about "fortune comes to one but once, and if rejected never returns." When I declined President Harrison's offer of the position of secretary of state in his Cabinet, I had on my desk a large number of telegrams signed by distinguished names and having only that quotation. There are many instances in the lives of successful men where they have repeatedly declined Dame Fortune's gift, and yet she has finally rewarded them according to their desires. I am inclined to think that the fickle lady is not always mortally offended by a refusal. I believe that there come in the life of almost everybody several opportunities, and few have the judgment to wisely decide what to decline and what to accept.

In 1876 Gardner Hubbard was an officer in the United States railway mail service. As this connection with the government was one of my duties in the New York Central, we met frequently. One day he said to me: "My son-in-law, Professor Bell, has made what I think a wonderful invention. It is a talking telegraph. We need ten thousand dollars, and I will give you one-sixth interest for that amount of money."

I was very much impressed with Mr. Hubbard's description of the possibilities of Professor Bell's invention. Before accepting, however, I called upon my friend, Mr.

William Orton, president of the Western Union Telegraph Company. Orton had the reputation of being the best-informed and most accomplished electrical expert in the country. He said to me: "There is nothing in this patent whatever, nor is there anything in the scheme itself, except as a toy. If the device has any value, the Western Union owns a prior patent called the Gray's patent, which makes the Bell device worthless."

When I returned to Mr. Hubbard he again convinced me, and I would have made the investment, except that Mr. Orton called at my house that night and said to me: "I know you cannot afford to lose ten thousand dollars, which you certainly will if you put it in the Bell patent. I have been so worried about it that contrary to my usual custom I have come, if possible, to make you promise to drop it." This I did.

The Bell patent was sustained in the courts against the Gray, and the telephone system became immediately popular and profitable. It spread rapidly all over the country, and innumerable local companies were organized, and with large interests for the privilege to the parent company.

I rarely ever part with anything, and I may say that principle has brought me so many losses and so many gains that I am as yet, in my eighty-eighth year, undecided whether it is a good rule or not. However, if I had accepted my friend Mr. Hubbard's offer, it would have changed my whole course of life. With the dividends, year after year, and the increasing capital, I would have netted by to-day at least one hundred million dollars. I have no regrets. I know my make-up, with its love for the social side of life and its good things, and for good times with good fellows. I also know the necessity

of activity and work. I am quite sure that with this necessity removed and ambition smothered, I should long ago have been in my grave and lost many years of a life which has been full of happiness and satisfaction.

My great weakness has been indorsing notes. A friend comes and appeals to you. If you are of a sympathetic nature and very fond of him, if you have no money to loan him, it is so easy to put your name on the back of a note. Of course, it is rarely paid at maturity, because your friend's judgment was wrong, and so the note is renewed and the amount increased. When finally you wake up to the fact that if you do not stop you are certain to be ruined, your friend fails when the notes mature, and you have lost the results of many years of thrift and saving, and also your friend.

I declined to marry until I had fifty thousand dollars. The happy day arrived, and I felt the fortunes of my family secure. My father-in-law and his son became embarrassed in their business, and, naturally, I indorsed their notes. A few years afterwards my father-in-law died, his business went bankrupt, I lost my fifty thousand dollars and found myself considerably in debt. As an illustration of my dear mother's belief that all misfortunes are sent for one's good, it so happened that the necessity of meeting and recovering from this disaster led to extraordinary exertions, which probably, except under the necessity, I never would have made. The efforts were successful.

Horace Greeley never could resist an appeal to indorse a note. They were hardly ever paid, and Mr. Greeley was the loser. I met him one time, soon after he had been a very severe sufferer from his mistaken kindness. He said to me with great emphasis: "Chauncey, I want

you to do me a great favor. I want you to have a bill put through the legislature, and see that it becomes a law, making it a felony and punishable with imprisonment for life for any man to put his name by way of indorsement on the back of another man's paper."

Dear old Greeley kept the practice up until he died, and the law was never passed. There was one instance, which I had something to do with, where the father of a young man, through whom Mr. Greeley lost a great deal of money by indorsing notes, arranged after Mr. Greeley's death to have the full amount of the loss paid to Mr. Greeley's heirs.

XXIII

ACTORS AND MEN OF LETTERS

One cannot speak of Sir Henry Irving without recalling the wonderful charm and genius of his leading lady, Ellen Terry. She never failed to be worthy of sharing in Irving's triumphs. Her remarkable adaptability to the different characters and grasp of their characteristics made her one of the best exemplifiers of Shakespeare of her time. She was equally good in the great characters of other playwrights. Her effectiveness was increased by an unusual ability to shed tears and natural tears. I was invited behind the scenes one evening when she had produced a great impression upon the audience in a very pathetic part. I asked her how she did what no one else was ever able to do.

"Why," she answered, "it is so simple when you are portraying ——" (mentioning the character), "and such a crisis arises in your life, that naturally and immediately the tears begin to flow." So they did when she was illustrating the part for me.

It was a privilege to hear Edwin Booth as Richelieu and Hamlet. I have witnessed all the great actors of my time in those characters. None of them equalled Edwin Booth. For a number of years he was exiled from the stage because his brother, Wilkes Booth, was the assassin of President Lincoln. His admirers in New York felt that it was a misfortune for dramatic art that so consummate an artist should be compelled to remain in private life. In order to break the spell they united and in-

vited Mr. Booth to give a performance at one of the larger theatres. The house, of course, was carefully ticketed with selected guests.

The older Mrs. John Jacob Astor, a most accomplished and cultured lady and one of the acknowledged leaders of New York society, gave Mr. Booth a dinner in honor of the event. The gathering represented the most eminent talent of New York in every department of the great city's activities. Of course, Mr. Booth had the seat of honor at the right of the hostess. On the left was a distinguished man who had been a Cabinet minister and a diplomat. During the dinner Mr. Evarts said to me: "I have known so and so all our active lives. He has been a great success in everything he has undertaken, and the wonder of it is that if there was ever an opportunity for him to say or do the wrong thing he never failed."

Curiously enough, the conversation at the dinner ran upon men outliving their usefulness and reputations. Several instances were cited where a man from the height of his fame gradually lived on and lived out his reputation. Whereupon our diplomat, with his fatal facility for saying the wrong thing, broke in by remarking in a strident voice: "The most remarkable instance of a man dying at the right time for his reputation was Abraham Lincoln." Then he went on to explain how he would have probably lost his place in history through the mistakes of his second term. Nobody heard anything beyond the words "Abraham Lincoln." Fortunately for the evening and the great embarrassment of Mr. Booth, the tact of Mrs. Astor changed the subject and saved the occasion.

Of all my actor friends none was more delightful either

on the stage or in private life than Joseph Jefferson. He early appealed to me because of his Rip Van Winkle. I was always devoted to Washington Irving and to the Hudson River. All the traditions which have given a romantic touch to different points on that river came from Irving's pen. In the days of my youth the influence of Irving upon those who were fortunate enough to have been born upon the banks of the Hudson was very great in every way.

As I met Jefferson quite frequently, I recall two of his many charming stories. He said he thought at one time that it would be a fine idea to play Rip Van Winkle at the village of Catskill, around which place was located the story of his hero. His manager selected the supernumeraries from among the farmer boys of the neighborhood. At the point of the play where Rip wakes up and finds the lively ghosts of the *Hendrick Hudson* crew playing bowls in the mountains, he says to each one of them, who all look and are dressed alike: "Are you his brother?"

"No," answered the young farmer who impersonated one of the ghosts, "Mr. Jefferson, I never saw one of these people before." As ghosts are supposed to be silent, this interruption nearly broke up the performance.

During the Spanish-American War I came on the same train with Mr. Jefferson from Washington. The interest all over the country at that time was the remarkable victory of Admiral Dewey over the Spanish fleet in the harbor of Manila. People wondered how Dewey could sink every Spanish ship and never be hit once himself. Jefferson said in his quaint way: "Everybody, including the secretary of the navy and several admirals, asked me how that could have happened. I told them the problem might be one which naval officers could not solve,

but it was very simple for an actor. The failure of the Spanish admiral was entirely due to his not having rehearsed. Success is impossible without frequent rehearsals."

Returning for a moment to Washington Irving, one of the most interesting spots near New York is his old home, Wolfert's Roost, and also the old church at Tarrytown where he worshipped, and of which he was an officer for many years. The ivy which partially covers the church was given to Mr. Irving by Sir Walter Scott, from Abbotsford. At the time when the most famous of British reviewers wrote, "Whoever read or reads an American book?" Sir Walter Scott announced the merit and coming fame of Washington Irving. But, as Rip Van Winkle says, when he returns after twenty years to his native village, "how soon we are forgot."

There was a dinner given in New York to celebrate the hundredth anniversary of Washington Irving's birth. I was one of the speakers. In an adjoining room was a company of young and very successful brokers, whose triumphs in the market were the envy of speculative America. While I was speaking they came into the room. When I had finished, the host at the brokers' dinner called me out and said: "We were much interested in your speech. This Irving you talked about must be a remarkable man. What is the dinner about?"

I answered him that it was in celebration of the hundredth anniversary of the birth of Washington Irving.

"Well," he said, pointing to an old gentleman who had sat beside me on the speakers' platform, "it is astonishing how vigorous he looks at that advanced age."

It was my good fortune to hear often and know personally Richard Mansfield. He was very successful in

many parts, but his presentation of Doctor Jekyll and Mr. Hyde was wonderful. At one time he came to me with a well-thought-out scheme for a national theatre in New York, which would be amply endowed and be the home of the highest art in the dramatic profession, and at the same time the finest school in the world. He wanted me to draw together a committee of the leading financiers of the country and, if possible, to impress them so that they would subscribe the millions necessary for carrying out his ideas. I was too busy a man to undertake so difficult a project.

One of the colored porters in the Wagner Palace Car service, who was always with me on my tours of inspection over the railroad, told me an amusing story of Mr. Mansfield's devotion to his art. He was acting as porter on Mansfield's car, when he was making a tour of the country. This porter was an exceedingly intelligent man. He appreciated Mansfield's achievements and played up to his humor in using him as a foil while always acting. When they were in a station William never left the car, but remained on guard for the protection of its valuable contents.

After a play at Kansas City Mansfield came into the car very late and said: "William, where is my manager?"

"Gone to bed, sir, and so have the other members of the company," answered William.

Then in his most impressive way Mansfield said: "William, they fear me. By the way, were you down at the depot to-night when the audience from the suburbs were returning to take their trains home?"

"Yes, sir," answered William, though he had not been out of the car.

"Did you hear any remarks made about my play?"

"Yes, sir."

"Can you give me an instance?"

"Certainly," replied William; "one gentleman remarked that he had been to the theatre all his life, but that your acting to-night was the most rotten thing he had ever heard or seen."

"William," shouted Mansfield, "get my Winchester and find that man."

So Mansfield and William went out among the crowds, and when William saw a big, aggressive-looking fellow who he thought would stand up and fight, he said: "There he is."

Mansfield immediately walked up to the man, covered him with his rifle, and shouted: "Hold up your hands, you wretch, and take back immediately the insulting remark you made about my play and acting and apologize."

The man said: "Why, Mr. Mansfield, somebody has been lying to you about me. Your performance to-night was the best thing I ever saw in my life."

"Thank you," said Mansfield, shouldering his rifle, and added in the most tragic tone: "William, lead the way back to the car."

Among the most interesting memories of old New Yorkers are the suppers which Mr. Augustin Daly gave on the one hundredth performance of a play. Like everything which Daly did, the entertainment was perfect. A frequent and honored guest on these occasions was General Sherman, who was then retired from the army and living in New York. Sherman was a military genius but a great deal more. He was one of the most sensitive men in the world. Of course, the attraction at

these suppers was Miss Rehan, Daly's leading lady. Her personal charm, her velvet voice, and her inimitable coquetry made every guest anxious to be her escort. She would pretend to be in doubt whether to accept the attentions of General Sherman or myself, but when the general began to display considerable irritation, the brow of Mars was smoothed and the warrior made happy by a gracious acceptance of his arm.

On one of these occasions I heard the best after-dinner speech of my life. The speaker was one of the most beautiful women in the country, Miss Fanny Davenport. That night she seemed to be inspired, and her eloquence, her wit, her humor, her sparkling genius, together with the impression of her amazing beauty were very effective.

P. T. Barnum, the showman, was a many-sided and interesting character. I saw much of him as he rented from the Harlem Railroad Company the Madison Square Garden, year after year. Barnum never has had an equal in his profession and was an excellent business man. In a broad way he was a man of affairs, and with his vast fund of anecdotes and reminiscences very entertaining socially.

An Englishman of note came to me with a letter of introduction, and I asked him whom he would like to meet. He said: "I think principally Mr. P. T. Barnum." I told this to Barnum, who knew all about him, and said: "As a gentleman, he knows how to meet me." When I informed my English friend, he expressed his regret and at once sent Barnum his card and an invitation for dinner. At the dinner Barnum easily carried off the honors with his wonderful fund of unusual adventures.

My first contact with Mr. Barnum occurred many years before, when I was a boy up in Peekskill. At that time he had a museum and a show in a building at the corner of Ann Street and Broadway, opposite the old Astor House. By skilful advertising he kept people all over the country expecting something new and wonderful and anxious to visit his show.

There had been an Indian massacre on the Western plains. The particulars filled the newspapers and led to action by the government in retaliation. Barnum advertised that he had succeeded in securing the Sioux warriors whom the government had captured, and who would re-enact every day the bloody battle in which they were victorious.

It was one of the hottest afternoons in August when I appeared there from the country. The Indians were on the top floor, under the roof. The performance was sufficiently blood-curdling to satisfy the most exacting reader of a penny-dreadful. After the performance, when the audience left, I was too fascinated to go, and remained in the rear of the hall, gazing at these dreadful savages. One of them took off his head-gear, dropped his tomahawk and scalping-knife, and said in the broadest Irish to his neighbor: "Moike, if this weather don't cool off, I will be nothing but a grease spot." This was among the many illusions which have been dissipated for me in a long life. Notwithstanding that, I still have faith, and dearly love to be fooled, but not to have the fraud exposed.

Wyndham, the celebrated English actor, was playing one night in New York. He saw me in the audience and sent a messenger inviting me to meet him at supper

at the Hoffman House. After the theatre I went to the hotel, asked at the desk in what room the theatrical supper was, and found there Bronson Howard, the playwright, and some others. I told them the object of my search, and Mr. Howard said: "You are just in the right place."

The English actor came later, and also a large number of other guests. I was very much surprised and flattered at being made practically the guest of honor. In the usual and inevitable after-dinner speeches I joined enthusiastically in the prospects of American contributions to drama and especially the genius of Bronson Howard.

It developed afterwards that the actors' dinner was set for several nights later, and that I was not invited or expected to this entertainment, which was given by Mr. Howard to my actor friend, but by concert of action between the playwright and the actor, the whole affair was turned into a dinner to me. Broadway was delighted at the joke, but did not have a better time over it than I did.

The supper parties after the play which Wyndham gave were among the most enjoyable entertainments in London. His guests represented the best in society, government, art, literature, and drama. His dining-room was built and furnished like the cabin of a yacht and the illusion was so complete that sensitive guests said they felt the rolling of the sea.

One evening he said to me: "I expect a countryman of yours, a charming fellow, but, poor devil, he has only one hundred and fifty thousand pounds a year. He is still young, and all the managing mothers are after him for their daughters."

When the prosperous American with an income of

three-quarters of a million arrived, I needed no introduction. I knew him very well and about his affairs. He had culture, was widely travelled, was both musical and artistic, and his fad was intimacy with prominent people. His dinners were perfection and invitations were eagerly sought. On the plea of delicate health he remained a brief period in the height of the season in London and Paris. But during those few weeks he gave all that could be done by lavish wealth and perfect taste, and did it on an income of twenty thousand dollars a year.

Most of the year he lived modestly in the mountains of Switzerland or in Eastern travel, but was a welcome guest of the most important people in many lands. The only deceit about it, if it was a deceit, was that he never went out of his way to deny his vast wealth, and as he never asked for anything there was no occasion to publish his inventory. The pursuing mothers and daughters never succeeded, before his flight, in leading him far enough to ask for a show-down.

Many times during my visits to Europe I have been besieged to know the income of a countryman. On account of the belief over there in the generality of enormous American fortunes, it is not difficult to create the impression of immense wealth. While the man would have to make a statement and give references, the lady's story is seldom questioned. I have known some hundreds and thousands of dollars become in the credulous eyes of suitors as many millions, and a few millions become multimillions. In several instances the statements of the lady were accepted as she achieved her ambition.

For a tired man who has grown stale with years of unremitting work I know of no relief and recuperation

equal to taking a steamer and crossing the ocean to Europe. I did this for a few weeks in midsummer many times and always with splendid and most refreshing results. With fortunate introductions, I became acquainted with many of the leading men of other countries, and this was a liberal education.

There is invariably a concert for charities to help the sailors on every ship. I had many amusing experiences in presiding on these occasions. I remember once we were having a rough night of it, and one of our artists, a famous singer, who had made a successful tour of the United States, was a little woman and her husband a giant. He came to me during the performance and said: "My wife is awfully seasick, but she wants to sing, and I want her to. In the intervals of her illness she is in pretty good shape for a little while. If you will stop everything when you see me coming in with her, she will do her part."

I saw him rushing into the saloon with his wife in his arms, and immediately announced her for the next number. She made a great triumph, but at the proper moment was caught up by her husband and carried again to the deck. He said to me afterwards: "My wife was not at her best last night, because there is a peculiarity about seasickness and singers; the lower notes in which she is most effective are not at such times available or in working order."

Augustin Daly did a great service to the theatre by his wonderful genius as a manager. He discovered talent everywhere and encouraged it. He trained his company with the skill of a master, and produced in his theatres here and in London a series of wonderful plays. He did not permit his artists to take part, as a rule, in these

concerts on the ship, but it so happened that on one occasion we celebrated the Fourth of July. I went to Mr. Daly and asked him if he would not as an American take the management of the whole celebration. This appealed to him, and he selected the best talent from his company. Among them was Ada Rehan. I knew Miss Rehan when she was in the stock company at Albany in her early days. With Mr. Daly, who discovered her, she soon developed into a star of the first magnitude.

Mr. Daly persisted on my presiding and introducing the artists, and also delivering the Fourth of July oration. The celebration was so successful in the saloon that Mr. Daly had it repeated the next night in the second cabin, and the night after that in the steerage. The steerage did its best, and was clothed in the finest things which it was carrying back to astonish the old folks in the old country, and its enthusiasm was greater, if possible, than the welcome which had greeted the artists among the first and second cabin passengers.

After Miss Rehan had recited her part and been encored and encored, I found her in tears. I said: "Miss Rehan, your triumph has been so great that it should be laughter."

"Yes," she said, "but it is so pathetic to see these people who probably never before met with the highest art."

Among the many eminent English men of letters who at one time came to the United States was Matthew Arnold. The American lecture promoters were active in securing these gentlemen, and the American audiences were most appreciative. Many came with letters of introduction to me.

Mr. Arnold was a great poet, critic, and writer, and

an eminent professor at Oxford University and well known to our people. His first address was at Chickering Hall to a crowded house. Beyond the first few rows no one could hear him. Explaining this he said to me: "My trouble is that my lectures at the university are given in small halls and to limited audiences." I advised him that before going any farther he should secure an elocutionist and accustom himself to large halls, otherwise his tour would be a disappointment.

He gave me an amusing account of his instructor selecting Chickering Hall, where he had failed, and making him repeat his lecture, while the instructor kept a progressive movement farther and farther from the stage until he reached the rear seats, when he said he was satisfied. It is a tribute to the versatility of this great author that he learned his lesson so well that his subsequent lectures in different parts of the country were very successful.

Once Mr. Arnold said to me: "The lectures which I have prepared are for university audiences, to which I am accustomed. I have asked my American manager to put me only in university towns, but I wish you would look over my engagements."

Having done this, I remarked: "Managers are looking for large and profitable audiences. There is no university or college in any of these towns, though one of them has an inebriate home and another an insane asylum. However, both of these cities have a cultured population. Your noisiest and probably most appreciative audience will be at the one which is a large railroad terminal. Our railroad people are up-to-date."

I saw Mr. Arnold on his return from his tour. The description he gave of his adventures was very pictur-

esque and the income had been exceedingly satisfactory and beyond expectation.

Describing the peculiarities of the chairmen who introduced him, he mentioned one of them who said: "Ladies and gentlemen, next week we will have in our course the most famous magician there is in the world, and the week after, I am happy to say, we shall be honored by the presence of a great opera-singer, a wonderful artist. For this evening it is my pleasure to introduce to you that distinguished English journalist, Mr. Edwin Arnold." Mr. Arnold began his lecture with a vigorous denial that he was Edwin Arnold, whom I judged he did not consider in his class.

Mr. Arnold received in New York and in the larger cities which he visited the highest social attention from the leading families. I met him several times and found that he never could be reconciled to our two most famous dishes—terrapin and canvasback duck—the duck nearly raw. He said indignantly to one hostess, who chided him for his neglect of the canvasback: "Madam, when your ancestors left England two hundred and fifty years ago, the English of that time were accustomed to eat their meat raw; now they cook it." To which the lady answered: "I am not familiar with the customs of my ancestors, but I know that I pay my chef, who cooked the duck, three hundred dollars a month."

We were all very fond of Thackeray. He did not have the general popularity of Charles Dickens, nor did he possess Dickens's dramatic power, but he had a large and enthusiastic following among our people. It was an intellectual treat and revelation to listen to him. That wonderful head of his seemed to be an enormous and perennial fountain of wit and wisdom.

They had a good story of him at the Century Club, which is our Athenæum, that when taken there after a lecture by his friends they gave him the usual Centurion supper of those days: saddlerock oysters. The saddlerock of that time was nearly as large as a dinner-plate. Thackeray said to his host: "What do I do with this animal?"

The host answered: "We Americans swallow them whole."

Thackeray, always equal to the demand of American hospitality, closed his eyes and swallowed the oyster, and the oyster went down. When he had recovered he remarked: "I feel as if I had swallowed a live baby."

We have been excited at different times to an absorbing extent by the stories of explorers. None were more generally read than the adventures of the famous missionary, David Livingstone, in Africa. When Livingstone was lost the whole world saluted Henry M. Stanley as he started upon his famous journey to find him. Stanley's adventures, his perils and escapes, had their final success in finding Livingstone. The story enraptured and thrilled every one. The British Government knighted him, and when he returned to the United States he was Sir Henry Stanley. He was accompanied by his wife, a beautiful and accomplished woman, and received with open arms.

I met Sir Henry many times at private and public entertainments and found him always most interesting. The Lotos Club gave him one of its most famous dinners, famous to those invited and to those who spoke.

It was arranged that he should begin his lecture tour of the United States in New York. At the request of Sir Henry and his committee I presided and introduced

him at the Metropolitan Opera House. The great auditorium was crowded to suffocation and the audience one of the finest and most sympathetic.

We knew little at that time of Central Africa and its people, and the curiosity was intense to hear from Sir Henry a personal and intimate account of his wonderful discoveries and experiences. He thought that as his African life was so familiar to him, it must be the same to everybody else. As a result, instead of a thriller he gave a commonplace talk on some literary subject which bored the audience and cast a cloud over a lecture tour which promised to be one of the most successful. Of course Sir Henry's effort disappointed his audience the more because their indifference and indignation depressed him, and he did not do justice to himself or the uninteresting subject which he had selected. He never again made the same mistake, and the tour was highly remunerative.

For nearly a generation there was no subject which so interested the American people as the adventures of explorers. I met many of them, eulogized them in speeches at banquets given in their honor. The people everywhere were open-eyed, open-eared, and open-mouthed in their welcome and eagerness to hear them.

It is a commentary upon the fickleness of popular favor that the time was so short before these universal favorites dropped out of popular attention and recollection.

XXIV

SOCIETIES AND PUBLIC BANQUETS

The most unique experience in my life has been the dinners given to me by the Montauk Club of Brooklyn on my birthday. The Montauk is a social club of high standing, whose members are of professional and business life and different political and religious faiths.

Thirty years ago Mr. Charles A. Moore was president of the club. He was a prominent manufacturer and a gentleman of wide influence in political and social circles. Mr. McKinley offered him the position of secretary of the navy, which Mr. Moore declined. He came to me one day with a committee from the club, and said: "The Montauk wishes to celebrate your birthday. We know that it is on the 23d of April, and that you have two distinguished colleagues who also have the 23d as their birthday—Shakespeare and St. George. We do not care to include them, but desire only to celebrate yours."

The club has continued these celebrations for thirty years by an annual dinner. The ceremonial of the occasion is a reception, then dinner, and, after an introduction by the president, a speech by myself. To make a new speech every year which will be of interest to those present and those who read it, is not easy.

These festivities had a fortunate beginning. In thinking over what I should talk about at the first dinner, I decided to get some fun out of the municipality of Brooklyn by a picturesque description of its municipal conditions. It was charged in the newspapers that

there had been serious graft in some public improvements which had been condoned by the authorities and excused by an act of the legislature. It had also been charged that the Common Council had been giving away valuable franchises to their favorites. Of course, this presented a fine field of contrast between ancient and modern times. In ancient times grateful citizens erected statues to eminent men who had deserved well of their country in military or civic life, but Brooklyn had improved upon the ancient model through the grant of public utilities. The speech caused a riot after the dinner as to its propriety, many taking the ground that it was a criticism, and, therefore, inappropriate to the occasion. However, the affair illustrated a common experience of mine that unexpected results will sometimes flow from a bit of humor, if the humor has concealed in it a stick of dynamite.

The Brooklyn pulpit, which is the most progressive in the world, took the matter up and aroused public discussion on municipal affairs. The result was the formation of a committee of one hundred citizens to investigate municipal conditions. They found that while the mayor and some other officials were high-toned and admirable officers, yet the general administration of the city government had in the course of years become so bad that there should be a general reformation. The reform movement was successful; it spread over to New York and there again succeeded, and the movement for municipal reform became general in the country.

The next anniversary dinner attracted an audience larger than the capacity of the club, and every one of the thirty has been an eminent success. For many years the affair has received wide publicity in the United

States, and has sometimes been reported in foreign newspapers. I remember being in London with the late Lieutenant-Governor Woodruff, when we saw these head-lines at a news-stand on the Strand: "Speech by Chauncey Depew at his birthday dinner at the Montauk Club, Brooklyn." During this nearly third of a century the membership of the club has changed, sons have succeeded fathers and new members have been admitted, but the celebration seems to grow in interest.

During the last fourteen years the president of the club has been Mr. William H. English. He has done so much for the organization in every way that the members would like to have him as their executive officer for life. Mr. English is a splendid type of the American who is eminently successful in his chosen career, and yet has outside interest for the benefit of the public. Modest to a degree and avoiding publicity, he nevertheless is the motive power of many movements progressive and charitable.

Twenty-four years ago a company of public-spirited women in the city of Des Moines, Iowa, organized a club. They named it after me. For nearly a quarter of a century it has been an important factor in the civic life of Des Moines. It has with courage, intelligence, and independence done excellent work. At the time of its organization there were few if any such organizations in the country, and it may claim the position of pioneer in women's activity in public affairs.

Happily free from the internal difficulties and disputes which so often wreck voluntary associations, the Chauncey Depew Club is stronger than ever. It looks forward with confidence to a successful celebration of its quarter of a century.

I have never been able to visit the club, but have had with it frequent and most agreeable correspondence. It always remembers my birthday in the most gratifying way. I am grateful to its members for bestowing upon me one of the most pleasurable compliments of my life.

A public dinner is a fine form of testimonial. I have had many in my life, celebrating other things than my birthday. One of the most notable was given me by the citizens of Chicago in recognition of my efforts to make their great Columbian exhibition a success. Justice John M. Harlan presided, and distinguished men were present from different parts of the country and representing great interests. Probably the speech which excited the most comment was a radical attack of Andrew Carnegie on the government of Great Britain, in submitting to the authority of a king or a queen. Canada was represented by some of the high officials of that self-governing colony. The Canadians are more loyal to the English form of government than the English themselves. My peppery Scotch friend aroused a Canadian official, who returned his assault with vigor and interest.

It is a very valuable experience for an American to attend the annual banquet of the American Chamber of Commerce in Paris. The French Government recognizes the affair by having a company of their most picturesquely uniformed soldiers standing guard both inside and outside the hall. The highest officials of the French Government always attend and make speeches. The American Ambassador replies in a speech partly in English, and, if he is sufficiently equipped, partly in French. General Horace Porter and Henry White were equally happy both in their native language and in that of the

French. The French statesmen, however, were so fond of Myron T. Herrick that they apparently not only grasped his cordiality but understood perfectly his eloquence. The honor has several times been assigned to me of making the American speech in unadulterated American. The French may not have understood, but with their quick apprehension the applause or laughter of the Americans was instantly succeeded by equal manifestations on the part of the French.

Among the many things which we have inherited from our English ancestry are public dinners and after-dinner speeches. The public dinner is of importance in Great Britain and utilized for every occasion. It is to the government the platform where the ministers can lay frankly before the country matters which they could not develop in the House of Commons. Through the dinner speech they open the way and arouse public attention for measures which they intend to propose to Parliament, and in this way bring the pressure of public opinion to their support.

In the same way every guild and trade have their festive functions with serious purpose, and so have religious, philanthropic, economic, and sociological movements. We have gone quite far in this direction, but have not perfected the system as they have on the other side. I have been making after-dinner speeches for sixty years to all sorts and conditions of people, and on almost every conceivable subject. I have found these occasions of great value because under the good-fellowship of the occasion an unpopular truth can be sugar-coated with humor and received with applause, while in the processes of digestion the next day it is working with the audience and through the press in the way the pill

was intended. A popular audience will forgive almost anything with which they do not agree, if the humorous way in which it is put tickles their risibilities.

Mr. Gladstone was very fine at the lord mayor's dinner at Guild Hall, where the prime minister develops his policies. So it was with Lord Salisbury and Balfour, but the prince of after-dinner speakers in England is Lord Rosebery. He has the humor, the wit, and the artistic touch which fascinates and enraptures his audience.

I have met in our country all the men of my time who have won fame in this branch of public address. The most remarkable in effectiveness and inspiration was Henry Ward Beecher. A banquet was always a success if it could have among its speakers William M. Evarts, Joseph H. Choate, James S. Brady, Judge John R. Brady, General Horace Porter, or Robert G. Ingersoll.

After General Grant settled in New York he was frequently a guest at public dinners and always produced an impression by simple, direct, and effective oratory.

General Sherman, on the other hand, was an orator as well as a fighter. He never seemed to be prepared, but out of the occasion would give soldierly, graphic, and picturesque presentations of thought and description.

Not to have heard on these occasions Robert G. Ingersoll was to have missed being for the evening under the spell of a magician. I have been frequently asked if I could remember occasions of this kind which were of more than ordinary interest.

After-dinner oratory, while most attractive at the time, is evanescent, but some incidents are interesting in memory. At the time of Queen Victoria's jubilee I was present where a representative of Canada was called

upon for a speech. With the exception of the Canadian and myself the hosts and guests were all English. My Canadian friend enlarged upon the wonders of his country. A statement of its marvels did not seem sufficient for him unless it was augmented by comparisons with other countries to the glory of Canada, and so he compared Canada with the United States. Canada had better and more enduring institutions, she had a more virile, intelligent, and progressive population, and she had protected herself, as the United States did not, against undesirable immigration, and in everything which constituted an up-to-date, progressive, healthy, and hopeful commonwealth she was far in advance of the United States.

I was called upon immediately afterwards and said I would agree with the distinguished gentleman from Canada that in one thing at least Canada was superior to the United States, and it was that she had far more land, but it was mostly ice. I regret to remember that my Canadian friend lost his temper.

One of the historical dinners of New York, which no one will forget who was there, was just after the close of the Civil War, or, as my dear old friend, Colonel Waterson, called it, "The War between the States." The principal guests were General Sherman and Henry W. Grady of Atlanta, Ga. General Sherman, in his speech, described the triumphant return of the Union Army to Washington, its review by the President, and then its officers and men returning to private life and resuming their activities and industries as citizens. It was a word-picture of wonderful and startling picturesqueness and power and stirred an audience, composed largely of veterans who had been participants both in the battles and

in the parades, to the highest degree of enthusiasm. Mr. Grady followed. He was a young man with rare oratorical gifts. He described the return of the Confederate soldiers to their homes after the surrender at Appomattox. They had been four years fighting and marching. They were ragged and poor. They returned to homes and farms, many of which had been devastated. They had no capital, and rarely animals or farming utensils necessary to begin again. But with superb courage, not only on their own part but with the assistance of their wives, sisters, and daughters, they made the desert land flourish and resurrected the country.

This remarkable description of Grady, which I only outline, came as a counterpart to the triumphant epic of General Sherman. The effect was electric, and beyond almost any that have ever occurred in New York or anywhere, and Grady sprang into international fame.

Joseph H. Choate was a most dangerous fellow speaker to his associates who spoke before him. I had with him many encounters during fifty years, and many times enjoyed being the sufferer by his wit and humor. On one occasion Choate won the honors of the evening by an unexpected attack. There is a village in western New York which is named after me. The enterprising inhabitants, boring for what might be under the surface of their ground, discovered natural gas. According to American fashion, they immediately organized a company and issued a prospectus for the sale of the stock. The prospectus fell into the hands of Mr. Choate. With great glee he read it and then with emphasis the name of the company: "The Depew Natural Gas Company, Limited," and waving the prospectus at me shouted: "Why limited?"

There have been two occasions in Mr. Choate's after-dinner speeches much commented upon both in this country and abroad. As I was present on both evenings, it seems the facts ought to be accurately stated. The annual dinner of the "Friendly Sons of St. Patrick" occurred during one of the years when the Home Rule question was most acute in England and actively discussed here. At the same time our Irish fellow citizens, with their talent for public life, had captured all the offices in New York City. They had the mayor, the majority of the Board of Aldermen, and a large majority of the judges. When Mr. Choate spoke he took up the Home Rule question, and, without indicating his own views, said substantially: "We Yankees used to be able to govern ourselves, but you Irish have come here and taken the government away from us. You have our entire city administration in your hands, and you do with us as you like. We are deprived of Home Rule. Now what you are clamoring for both at home and abroad is Home Rule for Ireland. With such demonstrated ability in capturing the greatest city on the western continent, and one of the greatest in the world, why don't you go back to Ireland and make, as you would, Home Rule there a success?"

I was called a few minutes afterwards to a conference of the leading Irishmen present. I was an honorary member of that society, and they were in a high state of indignation. The more radical thought that Mr. Choate's speech should be resented at once. However, those who appreciated its humor averted hostile action, but Mr. Choate was never invited to an Irish banquet again.

The second historical occasion was when the Scotch

honored their patron saint, St. Andrew. The attendance was greater than ever before, and the interest more intense because the Earl of Aberdeen was present. The earl was at that time Governor-General of Canada, but to the Scotchmen he was much more than that, because he was the chief of the Clan Gordon. The earl came to the dinner in full Highland costume. Lady Aberdeen and the ladies of the vice-regal court were in the gallery. I sat next to the earl and Choate sat next to me. Choate said: "Chauncey, are Aberdeen's legs bare?" I looked under the table-cloth and discovered that they were naturally so because of his costume. I answered: "Choate, they are."

I thought nothing of it until Choate began his speech, in which he said: "I was not fully informed by the committee of the importance of the occasion. I did not know that the Earl of Aberdeen was to be here as a guest of honor. I was especially and unfortunately ignorant that he was coming in the full panoply of his great office as chief of Clan Gordon. If I had known that I would have left my trousers at home."

Aberdeen enjoyed it, the ladies in the gallery were amused, but the Scotch were mad, and Choate lost invitations to future Scotch dinners.

Few appreciate the lure of the metropolis. It attracts the successful to win greater success with its larger opportunities. It has resistless charm with the ambitious and the enterprising. New York, with its suburbs, which are really a part of itself, is the largest city in the world. It is the only true cosmopolitan one. It has more Irish than any city in Ireland, more Germans and Italians than any except the largest cities in Germany or Italy. It has more Southerners than are gathered in

any place in any Southern State, and the same is true of Westerners and those from the Pacific coast and New England, except in Chicago, San Francisco, or Boston. There is also a large contingent from the West Indies, South America, and Canada.

The people who make up the guests at a great dinner are the survival of the fittest of these various settlers in New York. While thousands fail and go back home or drop by the way, these men have made their way by superior ability, foresight, and adaptability through the fierce competitions of the great city. They are unusually keen-witted and alert. For the evening of the banquet they leave behind their business and its cares and are bent on being entertained, amused, and instructed. They are a most catholic audience, broad-minded, hospitable, and friendly to ideas whether they are in accord with them or not, providing they are well presented. There is one thing they will not submit to, and that is being bored.

These functions are usually over by midnight, and rarely last so long; while out in the country and in other towns, it is no unusual thing to have a dinner with speeches run along until the early hours of the next morning. While public men, politicians, and aspiring orators seek their opportunities upon this platform in New York, few succeed and many fail. It is difficult for a stranger to grasp the situation and adapt himself at once to its atmosphere. I have narrated in preceding pages some remarkable successes, and will give a few instances of very able and distinguished men who lost touch of their audiences.

One of the ablest men in the Senate was Senator John T. Morgan, of Alabama. I was fond of him personally

and admired greatly his many and varied talents. He was a most industrious and admirable legislator, and a debater of rare influence. He was a master of correct and scholarly English, and one of the very few who never went to the reporters' room to correct his speeches. As they were always perfect, he let them stand as they were delivered.

Senator Morgan was a great card on a famous occasion among the many well-known men who were also to speak. Senator Elihu Root presided with his usual distinction. Senator Morgan had a prepared speech which he read. It was unusually long, but very good. On account of his reputation the audience was, for such an audience, wonderfully patient and frequent and enthusiastic in its applause. Mistaking his favorable reception, Senator Morgan, after he had finished the manuscript, started in for an extended talk. After the hour had grown to nearly two, the audience became impatient, and the senator, again mistaking its temper, thought they had become hostile and announced that at many times and many places he had been met with opposition, but that he could not be put down or silenced. Mr. Root did the best he could to keep the peace, but the audience, who were anxious to hear the other speakers, gave up hope and began to leave, with the result that midnight saw an empty hall with a presiding officer and an orator.

At another great political dinner I sat beside Governor Oglesby, of Illinois. He was famous as a war governor and as a speaker. There were six speakers on the dais, of whom I was one. Happily, my turn came early. The governor said to me: "How much of the gospel can these tenderfeet stand?" "Well, Governor," I answered,

"there are six speakers to-night, and the audience will not allow the maximum of time occupied to be more than thirty minutes. Any one who exceeds that will lose his crowd and, worse than that, he may be killed by the eloquent gentlemen who are bursting with impatience to get the floor, and who are to follow him."

"Why," said the governor, "I don't see how any one can get started in thirty minutes."

"Well," I cautioned, "please do not be too long."

When the midnight hour struck the hall was again practically empty, the governor in the full tide of his speech, which evidently would require about three hours, and the chairman declared the meeting adjourned.

Senator Foraker, of Ohio, who was one of the appointed speakers, told me the next morning that at the Fifth Avenue Hotel, where he was stopping, he was just getting into bed when the governor burst into his room and fairly shouted: "Foraker, no wonder New York is almost always wrong. You saw to-night that it would not listen to the truth. Now I want to tell you what I intended to say." He was shouting with impassioned eloquence, his voice rising until, through the open windows, it reached Madison Square Park, when the watchman burst in and said: "Sir, the guests in this hotel will not stand that any longer, but if you must finish your speech I will take you out in the park."

During Cleveland's administration one of the New York banquets became a national affair. The principal speaker was the secretary of the interior, Lucius Q. C. Lamar, who afterwards became United States senator and justice of the Supreme Court. Mr. Lamar was one of the ablest and most cultured men in public life, and a fine orator. I was called upon so late that it was impos-

sible to follow any longer the serious discussions of the evening, and what the management and the audience wanted from me was some fun.

Lamar, with his Johnsonian periods and the lofty style of Edmund Burke, furnished an opportunity for a little pleasantry. He came to me, when I had finished, in great alarm and said: "My appearance here is not an ordinary one and does not permit humor. I am secretary of the interior, and the representative of the president and his administration. My speech is really the message of the president to the whole country, and I wish you would remedy any impression which the country might otherwise receive from your humor."

This I was very glad to do, but it was an instance of which I have met many, of a very distinguished and brilliant gentleman taking himself too seriously. At another rather solemn function of this kind I performed the same at the request of the management, but with another protest from the orator and his enmity.

In reminiscing, after he retired from the presidency, Mr. Cleveland spoke to me of his great respect and admiration for Mr. Lamar. Cleveland's speeches were always short. His talent was for compression and concentration, and he could not understand the necessity for an effort of great length. He told me that while Justice Lamar was secretary of the interior he came to him one day and said: "Mr. President, I have accepted an invitation to deliver an address in the South, and as your administration may be held responsible for what I say, I wish you would read it over and make any corrections or suggestions."

Mr. Cleveland said the speech was extraordinarily

long though very good, and when he returned it to Secretary Lamar he said to him: "That speech will take at least three hours to deliver. A Northern audience would never submit to over an hour. Don't you think you had better cut it down?" The secretary replied: "No, Mr. President; a Southern audience expects three hours, and would be better satisfied with five."

Justice Miller, one of the ablest of the judges of the Supreme Court at that time, was the principal speaker on another occasion. He was ponderous to a degree, and almost equalled in the emphasis of his utterances what was once said of Daniel Webster, that every word weighed twelve pounds. I followed him. The Attorney-General of the United States, who went back to Washington the next day with Justice Miller, told me that as soon as they had got on the train the justice commenced to complain that I had wholly misunderstood his speech, and that no exaggeration of interpretation would warrant what I said. The judge saw no humor in my little effort to relieve the situation, and took it as a reply of opposing counsel. He said that the justice took it up from another phase after leaving Philadelphia, and resumed his explanation from another angle as to what he meant after they reached Baltimore. When the train arrived at its destination and they separated in the Washington station, the justice turned to the attorney-general and said: "Damn Depew! Good-night."

Such are the perils of one who good-naturedly yields to the importunities of a committee of management who fear the failure with their audience of their entertainment.

The great dinners of New York are the Chamber of Commerce, which is a national function, as were also for

a long time, during the presidency of Mr. Choate, those of the New England Society. The annual banquets of the Irish, Scotch, English, Welsh, Holland, St. Nicholas, and the French, are also most interesting, and sometimes by reason of the presence of a national or international figure, assume great importance. The dinner which the Pilgrims Society tenders to the British ambassador gives him an opportunity, without the formalities and conventions of his office, of speaking his mind both to the United States and to his own people.

The annual banquets of the State societies are now assuming greater importance. Each State has thousands of men who have been or still are citizens, but who live in New York. Those dinners attract the leading politicians of their several States. It is a platform for the ambitious to be president and sometimes succeeds.

Garfield made a great impression at one of these State dinners, so did Foraker, and at the last dinner of the Ohio Society the star was Senator Warren G. Harding. On one occasion, when McKinley and Garfield were present, in the course of my speech I made a remark which has since been adopted as a sort of motto by the Buckeye State. Ohio, I think, has passed Virginia as a mother of presidents. It is remarkable that the candidates of both great parties are now of that State. I said in the closing of my speech, alluding to the distinguished guests and their prospects: "Some men have greatness thrust upon them, some are born great, and some are born in Ohio."

One of the greatest effects produced by a speech was by Henry Ward Beecher at an annual dinner of the Friendly Sons of St. Patrick. At the time, the Home Rule question was more than ordinarily acute and

Fenianism was rabid. While Mr. Beecher had great influence upon his audience, his audience had equal influence upon him. As he enlarged upon the wrongs of Ireland the responses became more enthusiastic and finally positively savage. This stirred the orator up till he gave the wildest approval to direct action and revolution, with corresponding cheers from the diners, standing and cheering. Mr. Beecher was explaining that speech for about a year afterwards. I was a speaker on the same platform.

Mr. Beecher always arrived late, and everybody thought it was to get the applause as he came in, but he explained to me that it was due to his method of preparation. He said his mind would not work freely until three hours after he had eaten. Many speakers have told me the same thing. He said when he had a speech to make at night, whether it was at a dinner or elsewhere, that he took his dinner in the middle of the day, and then a glass of milk and crackers at five o'clock, with nothing afterwards. Then in the evening his mind was perfectly clear and under absolute control.

The Lotos Club has been for fifty years to New York what the Savage Club is to London. It attracts as its guests the most eminent men of letters who visit this country. Its entertainments are always successful. For twenty-nine years it had for its president Mr. Frank R. Lawrence, a gentleman with a genius for introducing distinguished strangers with most felicitous speeches, and a committee who selected with wonderful judgment the other speakers of the evening. A successor to Mr. Lawrence, and of equal merit, has been found in Chester S. Lord, now president of the Lotos Club. Mr. Lord was for more than a third of a century managing editor

of the *New York Sun*, and is now chancellor of the University of the State of New York.

I remember one occasion where the most tactful man who ever appeared before his audience slipped his trolley, and that was Bishop Potter. The bishop was a remarkably fine preacher and an unusually attractive public speaker and past master of all the social amenities of life. The guest of the evening was the famous Canon Kingsley, author of "*Hypatia*" and other works at that time universally popular. The canon had the largest and reddest nose one ever saw. The bishop, among the pleasantries of his introduction, alluded to this headlight of religion and literature. The canon fell from grace and never forgave the bishop.

On Lotos nights I have heard at their best Lord Houghton, statesman and poet, Mark Twain, Stanley the explorer, and I consider it one of the distinctions as well as pleasures of my life to have been a speaker at the Lotos on more occasions than any one else during the last half century.

In Mr. Joseph Pulitzer's early struggles with his paper, the *New York World*, the editorial columns frequently had very severe attacks on Mr. William H. Vanderbilt and the New York Central Railroad. They were part, of course, of attacks upon monopoly. I was frequently included in these criticisms.

The Lotos Club gave a famous dinner to George Augustus Sala, the English writer and journalist. I found myself seated beside Mr. Pulitzer, whom I had never met. When I was called upon to speak I introduced, in what I had to say about the distinguished guest, this bit of audacity. I said substantially, in addition to Mr. Sala: "We have with us to-night a great journalist

who comes to the metropolis from the wild and woolly West. After he had purchased the *World* he came to me and said, 'Chauncey Depew, I have a scheme, which I am sure will benefit both of us. Everybody is envious of the prestige of the New York Central and the wealth of Mr. Vanderbilt. You are known as his principal adviser. Now, if in my general hostility to monopoly I include Mr. Vanderbilt and the New York Central as principal offenders, I must include you, because you are the champion in your official relationship of the corporation and of its policies and activities. I do not want you to have any feeling against me because of this. The policy will secure for the *World* everybody who is not a stockholder in the New York Central, or does not possess millions of money. When Mr. Vanderbilt finds that you are attacked, he is a gentleman and broad-minded enough to compensate you and will grant to you both significant promotion and a large increase in salary.'" Then I added: "Well, gentlemen, I have only to say that Mr. Pulitzer's experiment has been eminently successful. He has made his newspaper a recognized power and a notable organ of public opinion; its fortunes are made and so are his, and, in regard to myself, all he predicted has come true, both in promotion and in enlargement of income." When I sat down Mr. Pulitzer grasped me by the hand and said: "Chauncey Depew, you are a mighty good fellow. I have been misinformed about you. You will have friendly treatment hereafter in any newspaper which I control."

The Gridiron Club of Washington, because of both its ability and genius and especially its national position, furnishes a wonderful platform for statesmen. Its genius in creating caricatures and fake pageants of current po-

litical situations at the capital and its public men is most remarkable. The president always attends, and most of the Cabinet and justices of the Supreme Court. The ambassadors and representatives of the leading governments represented in Washington are guests, and so are the best-known senators and representatives of the time. The motto of the club is "Reporters are never present. Ladies always present." Though the association is made up entirely of reporters, the secrecy is so well kept that the speakers are unusually frank.

There was a famous contest one night there, however, between President Roosevelt and Senator Foraker, who at the time were intensely antagonistic, which can never be forgotten by those present. There was a delightful interplay between William J. Bryan and President Roosevelt, when Bryan charged the president with stealing all his policies and ideas.

If the speaker grasped the peculiarities of his audience and its temperament, his task was at once the most difficult and the most delightful, and my friend, Mr. Arthur Dunn, has performed most useful service in embalming a portion of Gridiron history in his volume, "Gridiron Nights."

Pierpont Morgan, the greatest of American bankers, was much more than a banker. He had a wonderful collection in his library and elsewhere of rare books and works of art. He was always delightful on the social side. He was very much pleased when he was elected president of the New England Society. The annual dinner that year was a remarkably brilliant affair. It was the largest in the history of the organization. The principal speaker was William Everett, son of the famous Edward Everett and himself a scholar of great acquirements and culture. His speech was another evidence of

a very superior man mistaking his audience. He was principal of the Adams Academy, that great preparatory institution for Harvard University, and he had greatly enlarged its scope and usefulness.

Mr. Everett evidently thought that the guests of the New England Society of New York would be composed of men of letters, educators, and Harvard graduates. Instead of that, the audience before him were mainly bankers and successful business men whose Puritan characteristics had enabled them to win great success in the competitions in the great metropolis in every branch of business. They were out for a good time and little else.

Mr. Everett produced a ponderous mass of manuscript and began reading on the history of New England education and the influence upon it of the Cambridge School. He had more than an hour of material and lost his audience in fifteen minutes. No efforts of the chairman could bring them to attention, and finally the educator lost that control of himself which he was always teaching to the boys and threw his manuscript at the heads of the reporters. From their reports in their various newspapers the next day, they did not seem to have absorbed the speech by this original method.

Choate and I were both to speak, and Choate came first. As usual, he threw a brick at me. He mentioned that a reporter had come to him and said: "Mr. Choate, I have Depew's speech carefully prepared, with the applause and laughter already in. I want yours." Of course, no reporter had been to either of us. Mr. Choate had in his speech an unusual thing for him, a long piece of poetry. When my turn came to reply I said: "The reporter came to me, as Mr. Choate has said, and made the remark: 'I already have Choate's speech.

It has in it a good deal of poetry.' I asked the reporter: 'From what author is the poetry taken?' He answered: 'I do not know the author, but the poetry is so bad I think Choate has written it himself.'"

Mr. Choate told me a delightful story of his last interview with Mr. Evarts before he sailed for Europe to take up his ambassadorship at the Court of St. James. "I called," he said, "on Mr. Evarts to bid him good-by. He had been confined to his room by a fatal illness for a long time. 'Choate,' he said, 'I am delighted with your appointment. You eminently deserve it, and you are pre-eminently fit for the place. You have won the greatest distinction in our profession, and have harvested enough of its rewards to enable you to meet the financial responsibilities of this post without anxiety. You will have a most brilliant and useful career in diplomacy, but I fear I will never see you again.'"

Mr. Choate said: "Mr. Evarts, we have had a delightful partnership of over forty years, and when I retire from diplomacy and resume the practice of the law I am sure you and I will go on together again for many years in the same happy old way."

Evarts replied: "No, Choate, I fear that cannot be. When I think what a care I am to all my people, lying so helpless here, and that I can do nothing any more to repay their kindness, or to help in the world, I feel like the boy who wrote from school to his mother a letter of twenty pages, and then added after the end: 'P. S. Dear mother, please excuse my longevity.'"

Where one has a reputation as a speaker and is also known to oblige friends and to be hardly able to resist importunities, the demands upon him are very great. They are also sometimes original and unique.

At one time, the day before Christmas, a representative of the *New York World* came to see me and said: "We are going to give a dinner to-night to the tramps who gather between ten and eleven o'clock at the Vienna Restaurant, opposite the St. Denis Hotel, to receive the bread which the restaurant distributes at that hour." This line was there every night standing in the cold waiting their turn. I went down to the hotel, and a young man and young lady connected with the newspaper crossed the street and picked out from the line a hundred guests.

It was a remarkable assemblage. The dinner provided was a beautiful and an excellent one for Christmas. As I heard their stories, there was among them a representative of almost every department of American life. Some were temporarily and others permanently down and out. Every one of the learned professions was represented and many lines of business. The most of them were in this condition, because they had come to New York to make their way, and had struggled until their funds were exhausted, and then they were ashamed to return home and confess their failure.

I presided at this remarkable banquet and made not only one speech but several. By encouraging the guests we had several excellent addresses from preachers without pulpits, lawyers without clients, doctors without patients, engineers without jobs, teachers without schools, and travellers without funds. One man arose and said: "Chauncey Depew, the *World* has given us such an excellent dinner, and you have given us such a merry Christmas Eve, we would like to shake hands with you as we go out."

I had long learned the art of shaking hands with the

public. Many a candidate has had his hands crushed and been permanently hurt by the vise-like grip of an ardent admirer or a vicious opponent. I remember General Grant complaining of this, of how he suffered, and I told him of my discovery of grasping the hand first and dropping it quickly.

The people about me were looking at these men as they came along, to see if there was any possible danger. Toward the end of the procession one man said to me: "Chauncey Depew, I don't belong to this crowd. I am well enough off and can take care of myself. I am an anarchist. My business is to stir up unrest and discontent, and that brings me every night to mingle with the crowd waiting for their dole of bread from Fleischmann's bakery. You do more than any one else in the whole country to create good feeling and dispel unrest, and you have done a lot of it to-night. I made up my mind to kill you right here, but you are such an infernal good fellow that I have not the heart to do it, so here's my hand."

On one occasion I received an invitation to address a sociological society which was to meet at the house of one of the most famous entertainers in New York. My host said that Edward Atkinson, the well-known New England writer, philosopher, and sociologist, would address the meeting. When I arrived at the house I found Atkinson in despair. The audience were young ladies in full evening dress and young men in white vests, white neckties, and swallow-tails. There was also a band present. We were informed that this society had endeavored to mingle instruction with pleasure, and it really was a dancing club, but they had conceived the idea of having something serious and instructive before the ball.

Mr. Atkinson said to me: "What won me to come here is that in Boston we have a society of the same name. It is composed of very serious people who are engaged in settlement and sociological work. They are doing their best to improve the conditions of the young women and young men who are in clerical and other employment. I have delivered several addresses before that society, and before the audiences which they gather, on how to live comfortably and get married on the smallest possible margin. Now, for instance, for my lecture here to-night I have on a ready-made suit of clothes, for which I paid yesterday five dollars. In that large boiler there is a stove which I have invented. In the oven of the stove is beef and various vegetables, and to heat it is a kerosene lamp with a clockwork attached. A young man or a young woman, or a young married couple go to the market and buy the cheap cuts of beef, and then, according to my instructions, they put it in the stove with the vegetables, light the lamp, set the clockwork and go to their work. When they return at five, six, or seven o'clock they find a very excellent and very cheap dinner all ready to be served. Now, of what use is my five-dollar suit of clothes and my fifty-cent dinner for this crowd of butterflies?"

However, Mr. Atkinson and I made up our minds to talk to them as if they needed it or would need it some day or other, and they were polite enough to ask questions and pretend to enjoy it. I understand that afterwards at the midnight supper there was more champagne and more hilarity than at previous gatherings of this sociological club.

During one of our presidential campaigns some young men came up from the Bowery to see me. They said:

"We have a very hard time down in our district. The crowd is a tough one but intelligent, and we think would be receptive of the truth if they could hear it put to them in an attractive form. We will engage a large theatre attached to a Bowery beer saloon if you will come down and address the meeting. The novelty of your appearance will fill the theatre."

I knew there was considerable risk, and yet it was a great opportunity. I believe that in meeting a crowd of that sort one should appear as they expect him to look when addressing the best of audiences. These people are very proud, and they resent any attempt on your part to be what they know you are not, but that you are coming down to their level by assuming a character which you presume to be theirs. So I dressed with unusual care, and when I went on the platform a short-sleeved, short-haired genius in the theatre shouted: "Chauncey thinks he is in Carnegie Hall."

The famous Tim Sullivan, who was several times a state senator and congressman, and a mighty good fellow, was the leader of the Bowery and controlled its political actions. He came to see me and said: "I hope you will withdraw from that appointment. I do not want you to come down there. In the first place, I cannot protect you, and I don't think it is safe. In the second place, you are so well known and popular among our people that I am afraid you will produce an impression, and if you get away with it that will hurt our machine."

In the course of my speech a man arose whom I knew very well as a district leader, and who was frequently in my office, seeking positions for his constituents and other favors. That night he was in his shirt-sleeves among

the boys. With the old volunteer fireman's swagger and the peculiar patois of that part of New York, he said: "Chauncey Depew, you have no business here. You are the president of the New York Central Railroad, ain't you, hey? You are a rich man, ain't you, hey? We are poor boys. You don't know us and can't teach us anything. You had better get out while you can."

My reply was this: "My friend, I want a little talk with you. I began life very much as you did. Nobody helped me. I was a country boy and my capital was this head," and I slapped it, "these legs," and I slapped them, "these hands," and I slapped them, "and by using them as best I could I have become just what you say I am and have got where you will never arrive."

A shirt-sleeved citizen jumped up from the audience and shouted: "Go ahead, Chauncey, you're a peach." That characterization of a peach went into the newspapers and was attached to me wherever I appeared for many years afterwards, not only in this country but abroad. It even found a place in the slang column of the great dictionaries of the English language. The result of the meeting, however, was a free discussion in the Bowery, and for the first time in its history that particular district was carried by the Republicans.

After their triumph in the election I gave a dinner in the Union League Club to the captains of the election districts. There were about a hundred of them. The district captains were all in their usual business suits, and were as sharp, keen, intelligent, and up-to-date young men as one could wish to meet. The club members whom I had invited to meet my guests were, of course, in conventional evening dress. The novelty of the occasion was so enjoyed by them that they indulged

with more than usual liberality in the fluids and fizz and became very hilarious. Not one of the district captains touched a drop of wine.

While the club members were a little frightened at the idea of these East-siders coming, my guests understood and met every convention of the occasion before, during, and after dinner, as if it was an accustomed social function with them. The half dozen who made speeches showed a grasp of the political questions of the hour and an ability to put their views before an audience which was an exhibition of a high order of intelligence and self-culture.

In selecting a few out-of-the-way occasions which were also most interesting and instructive, I recall one with a society which prided itself upon its absence of narrowness and its freedom of thought and discussion. The speakers were most critical of all that is generally accepted and believed. Professor John Fiske, the historian, was the most famous man present, and very critical of the Bible. My good mother had brought me up on the Bible and instilled in me the deepest reverence for the good book. The criticism of the professor stirred me to a rejoinder. I, of course, was in no way equal to meeting him, with his vast erudition and scholarly accomplishments. I could only give what the Bible critic would regard as valueless, a sledge-hammer expression of faith. Somebody took the speech down. Doctor John Hall, the famous preacher and for many years pastor of the Fifth Avenue Presbyterian Church, told me that the Bible and the church societies in England had put the speech into a leaflet, and were distributing many millions of them in the British Isles.

It is singular what vogue and circulation a story of the

hour will receive. Usually these decorations of a speech die with the occasion. There was fierce rivalry when it was decided to celebrate the four hundredth anniversary of the landing of Columbus in America, between New York and Chicago, as to which should have the exhibition. Of course the Western orators were not modest in the claims which they made for the City by the Lakes. To dampen their ardor I embroidered the following story, which took wonderfully when told in my speech.

It was at the Eagle Hotel in Peekskill, at which it was said George Washington stopped many times as a guest during the Revolutionary War, where in respect to his memory they preserved the traditions of the Revolutionary period. At that time the bill of fare was not printed, but the waiter announced to the guest what would be served, if asked for. A Chicago citizen was dining at the hotel. He ordered each of the many items announced to him by the waiter. When he came to the deserts the waiter said: "We have mince-pie, apple-pie, pumpkin-pie, and custard-pie." The Chicago man ordered mince-pie, apple-pie, and pumpkin-pie. The disgusted waiter remarked: "What is the matter with the custard?" Alongside me sat a very well-known English gentleman of high rank, who had come to this country on a sort of missionary and evangelistic errand. Of course, he was as solemn as the task he had undertaken, which was to convert American sinners. He turned suddenly to me and, in a loud voice, asked: "What was the matter with the custard-pie?" The story travelled for years, was used for many purposes, was often murdered in the narration, but managed to survive, and was told to me as an original joke by one of the men I met at the convention last June in Chicago.

After Chicago received from Congress the appointment I did all I could to help the legislation and appropriations necessary. The result was that when I visited the city as an orator at the opening of the exhibition I was voted the freedom of the city, was given a great reception, and among other things reviewed the school children who paraded in my honor.

The Yale alumni of New York City had for many years an organization. In the early days the members met very infrequently at a dinner. This was a formal affair, and generally drew a large gathering, both of the local alumni and from the college and the country. These meetings were held at Delmonico's, then located in Fourteenth Street. The last was so phenomenally dull that there were no repetitions.

The speakers were called by classes, and the oldest in graduation had the platform. The result was disastrous. These old men all spoke too long, and it was an endless stream of platitudes and reminiscences of forgotten days until nearly morning. Then an inspiration of the chairman led him to say: "I think it might be well to have a word from the younger graduates."

There was a unanimous call for a well-known humorist named Styles. His humor was aided by a startling appearance of abundant red hair, an aggressive red mustache, and eyes which seemed to push his glasses off his nose. Many of the speakers, owing to the imperfection of the dental art in those days, indicated their false teeth by their trouble in keeping them in place, and the whistling it gave to their utterances. One venerable orator in his excitement dropped his into his tumbler in the midst of his address.

Styles said to this tired audience: "At this early hour

in the morning I will not attempt to speak, but I will tell a story. Down at Barnegat, N. J., where I live, our neighbors are very fond of apple-jack. One of them while in town had his jug filled, and on the way home saw a friend leaning over the gate and looking so thirsty that he stopped and handed over his jug with an offer of its hospitality. After sampling it the neighbor continued the gurgling as the jug rose higher and higher, until there was not a drop left in it. The indignant owner said: 'You infernal hog, why did you drink up all my apple-jack?' His friend answered: 'I beg your pardon, Job, but I could not bite off the tap, because I have lost all my teeth.'" The aptness of the story was the success of the evening.

Some years afterwards there was a meeting of the alumni to form a live association. Among those who participated in the organization were William Walter Phelps, afterwards member of Congress and minister to Austria; Judge Henry E. Howland; John Proctor Clarke, now chief justice of the Appellate Division; James R. Sheffield (several years later) now president of the Union League Club; and Isaac Bromley, one of the editors of the *New York Tribune*, one of the wittiest writers of his time, and many others who have since won distinction. They elected me president, and I continued such by successive elections for ten years.

The association met once a month and had a serious paper read, speeches, a simple supper, and a social evening. These monthly gatherings became a feature and were widely reported in the press. We could rely upon one or more of the faculty, and there was always to be had an alumnus of national reputation from abroad. We had a formal annual dinner, which was more largely

attended than almost any function of the kind in the city, and, because of the variety and excellence of the speaking, always very enjoyable.

The Harvard and Princeton alumni also had an association at that time, with annual dinners, and it was customary for the officers of each of these organizations to be guests of the one which gave the dinner. The presidents of the colleges represented always came. Yale could rely upon President Dwight, Harvard upon President Eliot, and Princeton upon President McCosh.

Of course, the interchanges between the representatives of the different colleges were as exciting and aggressive as their football and baseball contests are to-day. I recall one occasion of more than usual interest. It was the Princeton dinner, and the outstanding figure of the occasion was that most successful and impressive of college executives, President McCosh. He spoke with a broad Scotch accent and was in every sense a literalist. Late in the evening Mr. Beaman, a very brilliant lawyer and partner of Evarts and Choate, who was president of the Harvard Alumni Association, said to me: "These proceedings are fearfully prosaic and highbrow. When you are called, you attack President McCosh, and I will defend him." So in the course of my remarks, which were highly complimentary to Princeton and its rapid growth under President McCosh, I spoke of its remarkable success in receiving gifts and legacies, which were then pouring into its treasury every few months, and were far beyond anything which came either to Yale or Harvard, though both were in great need. Then I hinted that possibly this flow of riches was due to the fact that President McCosh had such an hypnotic influence over the graduates of Princeton and their fathers,

mothers, and wives that none of them felt there was a chance of a heavenly future unless Princeton was among the heirs.

Mr. Beaman was very indignant and with the continuing approval and applause of the venerable doctor made a furious attack upon me. His defense of the president was infinitely worse than my attack. He alleged that I had intimated that the doctor kept tab on sick alumni of wealth and their families, and at the critical moment there would be a sympathetic call from the doctor, and, while at the bedside he administered comfort and consolation, yet he made it plain to the patient that he could not hope for the opening of the pearly gates or the welcome of St. Peter unless Princeton was remembered. Then Beaman, in a fine burst of oratory, ascribed this wonderful prosperity not to any personal effort or appeal, but because the sons of Princeton felt such reverence and gratitude for their president that they were only too glad of an opportunity to contribute to the welfare of the institution.

The moment Beaman sat down the doctor arose, and with great intensity expressed his thanks and gratitude to the eloquent president of the Harvard alumni, and then shouted: "I never, never, never solicited a gift for Princeton from a dying man. I never, never, never sat by the bedside of a dying woman and held up the terrors of hell and the promises of heaven, according to the disposition she made of her estate. I never, never looked with unsympathetic and eager anticipation whenever any of our wealthy alumni appeared in ill health."

The doctor, however, retaliated subsequently. He invited me to deliver a lecture before the college, and entertained me most delightfully at his house. It was

a paid admission, and when I left in the morning he said: "I want to express to you on behalf of our college our thanks. We raised last evening through your lecture enough to fit our ball team for its coming contest with Yale." In that contest Princeton was triumphant.

The Yale Alumni Association subsequently evolved into the Yale Club of New York, which has in every way been phenomenally prosperous. It is a factor of national importance in supporting Yale and keeping alive everywhere appreciation and enthusiasm for and practice of Yale spirit.

My class of 1856 at Yale numbered ninety-seven on graduation. Only six of us survive. In these pages I have had a continuous class meeting. Very few, if any, of my associates in the New York Legislature of 1862 and 1863 are alive, and none of the State officers who served with me in the succeeding years. There is no one left in the service who was there when I became connected with the New York Central Railroad, and no executive officer in any railroad in the United States who held that position when I was elected and is still active.

It is the habit of age to dwell on the degeneracy of the times and lament the good old days and their superiority, but Yale is infinitely greater and broader than when I graduated sixty-five years ago. The New York Legislature and State executives are governing an empire compared with the problems which we had to solve fifty-nine years ago.

I believe in the necessity of leadership, and while recognizing a higher general average in public life, regret that the world crisis through which we have passed

and which is not yet completed, has produced no Washington, Lincoln, or Roosevelt. I rejoice that President Harding, under the pressure of his unequalled responsibilities, is developing the highest qualities of leadership. It is an exquisite delight to visualize each administration from 1856 and to have had considerable intimacy with the leaders in government and the moulders of public opinion during sixty-five unusually laborious years.

Many who have given their reminiscences have kept close continuing diaries. From these voluminous records they have selected according to their judgment. As I have before said, I have no data and must rely on my memory. This faculty is not logical, its operations are not by years or periods, but its films unroll as they are moved by association of ideas and events.

It has been a most pleasurable task to bring back into my life these worthies of the past and to live over again events of greater or lesser importance. Sometimes an anecdote illumines a character more than a biography, and a personal incident helps an understanding of a period more than its formal history.

Life has had for me immeasurable charms. I recognize at all times there has been granted to me the loving care and guidance of God. My sorrows have been alleviated and lost their acuteness from a firm belief in closer reunion in eternity. My misfortunes, disappointments, and losses have been met and overcome by abundant proof of my mother's faith and teaching that they were the discipline of Providence for my own good, and if met in that spirit and with redoubled effort to redeem the apparent tragedy they would prove to be blessings. Such has been the case.

While new friends are not the same as old ones, yet I have found cheer and inspiration in the close communion with the young of succeeding generations. They have made and are making this a mighty good world for me.

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